

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**UNITED STATES OF AMERICA,** )  
 )  
 **and** )  
 )  
 **THE STATE OF OHIO,** )  
 )  
 **Plaintiffs,** )  
 )  
 **v.** )  
 )  
 **CITY OF FOSTORIA, OHIO,** )  
 )  
 **Defendant.** )  
 \_\_\_\_\_ )

**Civil Action No.:** 3:06CV1626  
3:06CV1627

**Judge:** Jack Zouhary

**CONSENT DECREE**

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APPENDIX A – FOSTORIA’S NPDES PERMIT

APPENDIX B – FOSTORIA’S ORDINANCE NO. 2005-19 AND 2006-32

**UNITED STATES DISTRICT COURT  
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**CONSENT DECREE**

WHEREAS, Plaintiff United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“U.S. EPA”), filed a Complaint in this matter against the Defendant, City of Fostoria (“Fostoria”), seeking injunctive relief and civil penalties, and alleging, inter alia, that Fostoria violated the Clean Water Act (the “CWA”), 33 U.S.C. § 1251 et seq., and certain terms and conditions of the National Pollutant Discharge Elimination System (“NPDES”) permit issued to Fostoria pursuant to the CWA relating to the municipal wastewater treatment plant (“WWTP”) and sewer system owned and operated by Fostoria;

WHEREAS, Plaintiff State of Ohio (“Ohio”), on behalf of the Ohio Environmental Protection Agency (“Ohio EPA”), simultaneously filed a separate Complaint against Fostoria concerning Fostoria’s WWTP and sewer system and alleging violations of the CWA and of Chapter 6111 of the Ohio Revised Code (“O.R.C.”);

WHEREAS, the United States and Ohio moved for consolidation of their actions;

WHEREAS, Fostoria denies the allegations in the federal and state Complaints and denies that any violations occurred;

WHEREAS, nothing in this Consent Decree will be construed as an admission by Fostoria of violations of any provisions of the CWA, or of Fostoria's current or past NPDES permits, or of Chapter 6111 of the Ohio Revised Code;

WHEREAS, the United States, Ohio, and Fostoria (the "Parties") recognize, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I below, and with the consent of the Parties, it is hereby ORDERED, ADJUDGED and DECREED as follows:

#### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, 1355. This Court also has personal jurisdiction over the Parties to this action. Venue is proper in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a). The Complaints state claims upon which relief may be granted. Authority for the United States to bring its action is vested in the United States Department of Justice pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

2. Fostoria waives any and all objections that it might have to the Court's jurisdiction to enter and enforce this Consent Decree and to venue in this District.

## II. APPLICABILITY AND BINDING EFFECT

3. This Consent Decree will apply to and be binding upon the United States, on behalf of U.S. EPA, the State of Ohio, on behalf of Ohio EPA, and upon Fostoria, its successors and assigns, its officers, directors, employees, and agents in their capacities as such, and all other persons and entities as provided for in Fed. R. Civ. P. 65(d). In any action to enforce this Decree, Fostoria will not raise as a defense to liability the failure of its officers, directors, agents, servants, contractors, employees or any other persons or entities provided for in Fed. R. Civ. P. 65(d) to take any actions necessary to comply with the provisions hereof; provided, however, that nothing in this Paragraph will limit the applicability of Sections XVII ("Force Majeure between the United States and Fostoria") and XVIII ("Potential Force Majeure between Ohio and Fostoria") to the extent that any such failure is attributable to a Force Majeure event as defined in Paragraph 96.

4. Effective from the date of lodging of this Decree until its termination, in the event that Fostoria transfers any ownership or operation of its WWTP, the Sewer System, or any portion of its WWTP or Sewer System, and includes in such transfer, the transfer of any obligations under this Consent Decree, Fostoria will give written notice and a copy of this Consent Decree to any successors in interest at least thirty (30) days prior to such transfer. Fostoria will condition any transfer, in whole or in part, of ownership, operation, or other interest of the WWTP, the Sewer System, or any other portion of its WWTP and/or Sewer System upon the successful execution of the terms and conditions of this Decree. Simultaneously with such

notice, Fostoria will provide written notice of such transfer to the United States and Ohio as provided in Section XVI (Notices and Submissions). In the event of any such transfer of ownership or other interest, Fostoria will not be released from the obligations or liabilities of this Consent Decree unless: (i) the transferee has the financial and technical ability to assume these obligations and liabilities; (ii) the United States and Ohio have agreed to release Fostoria from the obligations and liabilities; (iii) the United States, Ohio, and the transferee have jointly moved to substitute the transferee as the defendant to this Consent Decree; and (iv) the Court has approved the substitution.

### **III. OBJECTIVES**

5. It is the express purpose of the Parties in entering into this Consent Decree to further the objectives of the CWA, as enunciated at Section 101 of the CWA, 33 U.S.C. § 1251, and the objectives of Chapter 6111 of the Ohio Revised Code. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree will have the objective of ensuring Fostoria's full compliance with the CWA and Chapter 6111 of the Ohio Revised Code.

### **IV. DEFINITIONS**

6. Unless otherwise defined herein, terms used in this Decree shall have the meaning given to those terms in the CWA, 33 U.S.C. § 1251 *et seq.*, the regulations promulgated thereunder at 40 C.F.R. Part 122, Chapter 6111 of the Ohio Revised Code, the regulations promulgated under that Chapter, and in Fostoria's NPDES Permit No. 2PD00031\*ND and any successor permits. The following definitions shall apply to the terms used in the Consent Decree:

- a. "Calendar Quarter" shall mean the three month period ending on March 31, June 30, September 30, and December 31.
- b. "CBOD" shall mean Carbonaceous Biochemical Oxygen Demand.
- c. "CBOD<sub>5</sub>" shall mean a five day test for CBOD.
- d. "Combined Sewer System" shall mean the portion of Fostoria's Sewer System designed to convey municipal sewage (domestic, commercial and industrial wastewaters) and stormwater to Fostoria's WWTP or to a Combined Sewer Overflow ("CSO") Outfall.
- e. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto.
- f. "CSO" or "Combined Sewer Overflow" shall mean any discharge from Fostoria's CSO Outfalls.
- g. "CSO Automatic Sampler and Flow Monitors" or "CSO Samplers" shall mean each of the following American Sigma Samplers that Fostoria owns and operates:

<u>Sampler Serial Number</u>	<u>CSO Location</u>
0498MPC014697	Outfall 004
79911020205001	Outfall 005
79911020205003	Outfall 006

h. "CSO Outfall" shall mean an outfall in the Combined Sewer System from which CSOs are discharged. Fostoria's CSO Outfalls are identified as "overflows" in Fostoria's NPDES Permit and are labeled as follows:

- 1) "CSO Outfall 004" is 2PD00031004 ("Thomas St.");
- 2) "CSO Outfall 005" is 2PD00031005 ("Berkshire Dr.");
- 3) "CSO Outfall 006" is 2PD00031006 ("Parkway Dr.");
- 4) "CSO Outfall 007" is 2PD00031007 ("Vine St.");
- 5) "CSO Outfall 008" is 2PD00031008 ("Circle Dr.");

i. "Date of Lodging" shall mean the date that this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Northern District of Ohio.

j. "Date of Entry" shall mean the date that this Consent Decree is entered by the Clerk of the Court for the United States District Court for the Northern District of Ohio after being signed by a federal district judge.

k. "Day" shall mean a calendar day unless expressly stated to be a working day. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday, federal holiday, or legal holiday for Fostoria, Fostoria shall have until the next calendar day that is not one of the aforementioned days for submission of such report or other deliverable.

l. "Dry Weather CSO" shall mean a CSO discharge that occurs at a permitted CSO Outfall when Fostoria's Sewer System is not receiving precipitation-related inflow. The Parties recognize that CSO Outfall 007 can discharge non-precipitation related infiltrating groundwater. Accordingly, for CSO Outfall 007 only, a Dry Weather CSO shall mean a CSO discharge that occurs whenever the Sanitary Sewer System overflows into the Vine Street stormwater relief sewer when the Sewer System is not receiving precipitation-related inflow.

m. "Evaluation of Control Alternatives Plan" shall mean the plan that Fostoria develops pursuant to Part I,C.B.5 of its NPDES Permit.

n. "Fostoria" shall mean the Defendant City of Fostoria, Ohio.

o. "Industrial User" shall mean a discharger of pollutants to Fostoria's Sewer System from a non-domestic source (as regulated by CWA Section 307(b), (c), and (d)).

p. "Infiltration" shall mean water entering the Sewer System from the ground through means that include, but are not limited to, defective pipes and sewer walls, pipe and sewer joints, connections, and manhole walls.

q. "Inflow" shall mean water introduced into the Sewer System from sources including, but not limited to, roof leaders, cellars, basement sump pumps, area drains in yards and driveways, foundation drains, cooling water discharges, drains from springs and swampy areas, cracked or broken manhole covers, cross connections from separate storm sewers, catch basins, storm water, surface run-off, and street wash waters.

r. "Long Term Control Plan" or "LTCP" shall mean the plan that Fostoria develops pursuant to Part I,C.B. of its NPDES Permit and Section V.G. of this Consent Decree.

s. "MGD" or "mgd" shall mean million gallons per day.

t. "NPDES Permit" shall mean Permit No. 2PD00031\*ND issued to the City of Fostoria by Ohio EPA, effective on August 1, 2004, and attached hereto as Appendix A, and all revisions, modifications and successors to this NPDES Permit.

u. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and any successor departments or agencies of the State of Ohio.

v. "Paragraph" shall mean a provision of this Consent Decree identified by an arabic number.

w. "Parties" shall mean the United States, the State of Ohio, and the City of Fostoria.

x. "Plaintiffs" shall mean the United States and the State of Ohio.

y. "Primary Overflow Containment Lagoon" shall mean the approximately two million gallon open basin with a synthetic liner located at Fostoria's WWTP.

z. "Quarterly Progress Report" shall mean the reports due on a quarterly basis under Section VI.A of this Consent Decree.

aaa. "Sanitary Sewer System" shall mean the system of sewers intended to carry liquid and water-carried waste to Fostoria's WWTP together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

bbb. "Section" shall mean a portion of this Consent Decree identified by an uppercase Roman Number.

ccc. "Sewer System" shall mean the wastewater collection and transmission system owned or operated by Fostoria designed to collect and convey municipal sewage (domestic, commercial, and industrial) to Fostoria's WWTP or to a Combined Sewer Overflow Outfall. "Sewer System" includes both the "Combined Sewer System" and the "Sanitary Sewer System."

ddd. "TSS" shall mean Total Suspended Solids.

eee. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

fff. "Waste Water Treatment Plant" or "WWTP" shall mean the waste water treatment plant owned and operated by the City of Fostoria and located at 1301 Perrysburg Road, Fostoria, Ohio, Wood County.

**V. COMPLIANCE MEASURES**

**A. OPERATION AND MAINTENANCE-RELATED MEASURES**

**7. CSO Automatic Samplers and Flow Monitors.**

a. Dates of Applicability. The provisions of this Paragraph will apply commencing on the Date of Entry of this Consent Decree and continuing until the earlier of: (i) the termination of this Consent Decree pursuant to Section XXII; or (ii) the CSO Outfall to which a CSO Automatic Sampler and Flow Monitor corresponds is permanently removed from service.

b. Operation, Maintenance, and Calibration of CSO Automatic Samplers and Flow Monitors. Fostoria will properly operate, maintain, and calibrate each CSO Automatic Sampler and Flow Monitor. City personnel will visually inspect each CSO Sampler and corresponding power surge protector no less than one time per week to ensure that each CSO Sampler and surge protector is in proper working order. In addition, Fostoria will retain the services of an outside contractor with technical expertise to provide preventative maintenance and calibration services on Fostoria's CSO Samplers in accordance with the manufacturer's recommended maintenance and calibration program. Fostoria will retain all records of the maintenance and calibration services performed by its outside contractor.

c. Repair and Replacement. Fostoria will timely repair any malfunctioning CSO Automatic Sampler and Flow Monitor and will timely replace any malfunctioning power surge protector. Fostoria will retain a log that records the date of any malfunction, the steps that Fostoria takes to repair the malfunctioning part, and the date that the Sampler comes back into full operating service. If Fostoria cannot repair a malfunctioning CSO Sampler within thirty (30)

days of becoming aware of a malfunction, Fostoria will enter into a contract to purchase a replacement automatic sampler and flow monitor for delivery no later than sixty (60) days after the start of the malfunction. As soon as any CSO Automatic Sampler and Flow Monitor fails to operate properly, Fostoria will ensure that sampling in accordance with Part II.E of Fostoria's NPDES Permit is instituted immediately.

8. Operation and Maintenance Manuals.

a. Waste Water Treatment Plant. Fostoria already has developed an operation and maintenance ("O & M") manual for its WWTP. At least one time per year in the first Calendar Quarter of each year commencing with 2007, Fostoria will review and update the WWTP O & M Manual. Fostoria's updates will include, but not be limited to, all necessary and appropriate modifications to reflect significant construction or replacement of major components at the WWTP.

b. Sewer System.

i. By no later than June 30, 2006, Fostoria will submit to U.S. EPA and Ohio EPA a document describing the cleaning and inspection program that Fostoria will undertake in the last six months of 2006 and during calendar year 2007. In particular, Fostoria will prioritize the areas to be cleaned and inspected in the second half of 2006 and in calendar year 2007 in order to coordinate, to the maximum extent practicable, major rehabilitation and replacement work within the Sewer System with the Evaluation of Control Alternatives Plan that Fostoria must submit on January 31, 2008. Fostoria will implement the program it describes in its June 30, 2006 submission.

ii. By no later than March 31, 2007, Fostoria will develop a comprehensive O & M manual for its Sewer System. Fostoria's Sewer System O & M Manual will include, but not be limited to, a sewer cleaning and inspection program that is regularly scheduled and prioritizes cleaning and inspection according to system needs and an ongoing program for rehabilitation and replacement of components of the Sewer System, as necessary.

iii. By no later than April 15, 2007, Fostoria will submit a copy of its complete Sewer System O & M Manual to U.S. EPA and Ohio EPA in either hard copy or electronic form. U.S. EPA and Ohio EPA may submit comments on the Manual, and the Parties will consult with each other regarding the incorporation of comments into the Manual.

iv. At least one time per year in the first Calendar Quarter of each year commencing with 2008, Fostoria will review and update its Sewer System O & M Manual. Fostoria's updates will include, but not be limited to, all necessary and appropriate modifications to reflect significant replacement or rehabilitation of major components of the Sewer System.

9. Sewer System Cleaning. By no later than September 30, 2010, Fostoria will complete the cleaning of 100% of its Sewer System in accordance with the prioritization of needs described in Fostoria's Sewer System O & M Manual. In the period between the Date of Lodging and September 30, 2010, Fostoria will not be required to re-clean areas of the Sewer System that it cleaned in calendar year 2004 through the Date of Lodging.

10. Sewer System Inspection. In accordance with the prioritization of needs described in Fostoria's Sewer System O & M Manual, Fostoria will inspect its Sewer System to achieve at least the following goals: assessing the structural condition of the system; locating and protecting against Inflow and Infiltration; identifying locations where grease and debris

accumulate or where roots intrude into the system; and ensuring that new connections are made correctly. In the Quarterly Progress Report due on January 31 of each calendar year commencing in 2007, Fostoria will provide the following information:

- a. a description of the cleaning and inspections of its Sewer System completed in the prior calendar year;
- b. a description of the rehabilitation and replacement work within its Sewer System started and completed in the prior year; and
- c. For the Quarterly Progress Reports due on January 31, 2007, a description of the rehabilitation and replacement work within its Sewer System that Fostoria anticipates that it will evaluate in the development of its Evaluation of Control Alternatives Plan due under Part I,C.B.5 of Fostoria's NPDES Permit and Paragraph 31 of this Consent Decree.

11. Operation and Maintenance of the Primary Overflow Containment Lagoon at the WWTP. The parties acknowledge and agree that the Primary Overflow Containment Lagoon at the WWTP currently is improperly graded, that any regrading would require removal of the existing liner, and that Fostoria will evaluate the future role of the Primary Overflow Containment Lagoon in the Evaluation of Control Alternatives Plan that Fostoria proposes pursuant to Paragraph 31. Commencing on the Date of Entry of the Consent Decree and continuing until completion of the implementation of the approved measures under the Evaluation of Control Alternatives plan for the Primary Overflow Containment Lagoon, Fostoria will operate and maintain the Primary Overflow Containment Lagoon so as to maximize the Lagoon's ability to stabilize flows within the WWTP during Combined Sewer Overflows. The measures that Fostoria will take will include, but not be limited to, practices to (i) ensure the physical integrity of the liner; (ii) eliminate any build-up of sludge, vegetation, and debris on the Lagoon bottom; and (iii) prevent the contents of the Lagoon from becoming septic.

12. Elimination of all Lime Slurry Discharges from the Fostoria Water Plant. By no later than June 30, 2006, Fostoria will permanently seal all connections between the Fostoria Water Plant and Fostoria's Sewer System that enable the Water Plant to discharge lime slurry into the Sewer System. Commencing on June 30, 2006, Fostoria is prohibited from discharging lime slurry from its Water Plant into its Sewer System. In the first Quarterly Progress Report due under this Consent Decree, Fostoria will certify completion of the permanent seal(s) required by this Paragraph.

**B. SYSTEM CHARACTERIZATION, INCLUDING FLOW MONITORING**

13. Installation of Rain Gauges.

a. WWTP Rain Gauge. Fostoria will continue to properly operate and maintain a rain gauge at its WWTP in order to secure representative precipitation data.

b. Additional Rain Gauges. Fostoria will continue to properly operate and maintain two additional rain gauges at representative locations away from the WWTP to generate representative precipitation data for the Sewer System.

14. Sewer System Mapping/Verification. Fostoria has validated the alignment, slope and elevation of all sewers that will be modeled as part of Fostoria's development of an LTCP, has identified the configuration and elevation of all weirs, gates or regulators where flows within the Sewer System can be diverted or detained (including all CSO Outfalls), and has verified pump station performance by field testing. No less than one time per year, Fostoria will update its Sewer System maps.

15. Influent Flow Monitoring at the WWTP. Fostoria will continue to properly operate and maintain an influent flow monitor that continuously records flow into the WWTP.

Fostoria will use the information provided by the influent flow monitor to support the development of Fostoria's LTCP.

16. Interim Measures to Improve Effluent Monitoring at the WWTP. In the first Quarterly Progress Report due under this Consent Decree, Fostoria will identify the steps it has taken to try to improve WWTP effluent monitoring. As part of the Evaluation of Control Alternatives Plan that Fostoria submits pursuant to Paragraph 31, Fostoria either will certify that the measures that it took under this Paragraph resulted in long-term, accurate and reliable final effluent monitoring or will propose a plan and schedule for the installation of an accurate and reliable final effluent monitor.

17. Dry Weather Monitoring Report. By no later than July 31, 2006, Fostoria will submit to U.S. EPA and Ohio EPA a report that reviews all instances where a discharge from a CSO Outfall was recorded or visually observed on days when no precipitation was recorded at the WWTP for that date. The Report will cover the period between April 1, 2004, through June 30, 2006. The Dry Weather Monitoring Report will include, but not be limited to, an evaluation of: (i) the likely causes of the reported or observed discharges; (ii) whether the likely causes of the reported or observed discharges have been corrected; (iii) the role that Fostoria's CSO monitoring equipment played in the reported or observed discharges; and (iv) the physical characteristics of each regulator (such as low freeboard dam) that may have increased the likelihood of the reported or observed discharges. The Dry Weather Monitoring Report will identify the actions that Fostoria implemented or will implement to cease all such reported or observed discharges, and, if applicable, a schedule for implementation. Fostoria will immediately commence implementation of the Report's recommendations under the schedule

proposed in the Report. U.S. EPA and/or Ohio EPA may submit comments on the Dry Weather Monitoring Report, and the Parties will consult with each other regarding the incorporation of any comments into the Report and, if applicable, its schedule of implementation.

18. Combined Sewer System Characterization, Monitoring, and Modeling Report.

Fostoria previously has submitted a Combined Sewer System Characterization, Monitoring, and Modeling Report to U.S. EPA and Ohio EPA pursuant to Part I.C.B.2. of Fostoria's NPDES Permit. This Report is subject to the review and approval of U.S. EPA and Ohio EPA. The Report will be reviewed based upon whether it: (i) sets forth the results of the characterization and verification work done pursuant to Paragraph 14; (ii) proposes a monitoring program consistent with the requirements of Part I.C.B.2. of Fostoria's NPDES Permit; (iii) proposes a hydraulic model to accurately evaluate the runoff generated by Fostoria's hydrology and describes the actual hydraulic capacities of Fostoria's sewers and the dry weather and wet weather characteristics of Fostoria's CSO Outfalls; (iv) proposes to calibrate and verify the hydraulic model using adequate rainfall and flow monitoring data (which data must include representative flows at locations upstream of the diversion structures, in the interceptors, and at the CSO Outfalls); and (v) sets forth an implementation schedule for the calibration and verification of the hydraulic model. Approval will be done in accordance with Section VI.C. of this Consent Decree.

C. ELIMINATION/REDUCTION OF INFLOW

19. By no later than December 31, 2006, Fostoria will develop and commence implementation of an ongoing program to identify and eliminate sources of Inflow into the Sewer System. Fostoria will consider the following measures in the development of this program:

identification and elimination of roof leaders and downspout connections leading to combined sewers; redirection of area and foundation drains and basement sump pumps; and elimination of unauthorized and/or illegal cross connections. Commencing with the Quarterly Progress Report due on January 31, 2007, Fostoria will describe the steps it has taken and will take in compliance with the provisions of this Paragraph.

**D. POLLUTION PREVENTION PROGRAM**

20. Street Sweeper. Fostoria will operate the street sweeper that Fostoria purchased in 2005 on no less than a weekly basis from March 1 to November 1 of each year, so as to minimize the introduction of pollution from city streets into the Sewer System. Fostoria will comply with the manufacturer's recommended maintenance program for the street sweeper to ensure maximum performance and minimal downtime.

21. Commencing with the Quarterly Progress Report due on January 31, 2007, Fostoria will identify and describe the measures it takes or supports to prevent pollution, including but not limited to, the street sweeping program, seasonal leaf pickups, litter control measures, recycling, household hazardous waste disposal and used motor oil collection. Fostoria will include an analysis of the appropriateness of the current level of action and support that Fostoria provides.

**E. PRETREATMENT/INDUSTRIAL USERS**

22. Evaluation of Industrial Users' Discharges that May Contribute to CSOs. In the Quarterly Progress Report due on October 31, 2006, Fostoria will: (i) identify each point of Industrial User ("IU") discharge to the Sewer System and each CSO Outfall that is downstream of each IU discharge point; (ii) evaluate whether or not each IU discharges waste water in batches

("batch discharges"); (iii) set forth recommendations for reducing IU impact on CSOs: the recommendations will consider prohibiting IUs from discharging in batches during wet weather and modifying existing IU permits at the time of their renewal to prohibit batch discharges during wet weather; and (iv) provide an implementation schedule, if applicable. Fostoria will immediately commence implementation of the recommendations under the schedule proposed in the report. U.S. EPA and/or Ohio EPA may submit comments on the evaluation, recommendations, and schedule, if any, in the Quarterly Progress Report, and the Parties will consult with each other regarding the incorporation of these comments into Fostoria's program.

23. Investigation of Causes of Non-Compliance.

a. Fostoria will comply with the provisions of Part III.12 of its NPDES Permit regarding non-compliance notification. If, within five days of the date of the discovery of an effluent exceedance(s), Fostoria is unable to complete an investigation of the causes and/or is unable to complete an identification of the steps it has taken to reduce, eliminate, and/or prevent the recurrence of the exceedance(s), Fostoria will continue its evaluation thereafter in a timely manner taking into account the scope and complexity of the exceedance(s) under investigation. If any Industrial User and/or septage hauler is found to have caused or contributed to effluent exceedance(s) or interfered with WWTP operations, Fostoria will take timely, appropriate, and effective enforcement action to resolve the non-compliance. Nothing in this Paragraph is intended to modify or alter the dates that Fostoria is required to make oral or written notifications under Part III.12 of its NPDES Permit.

b. Fostoria will provide to U.S. EPA copies of all written notifications and reports that Fostoria is required to submit to Ohio EPA under Part III.12 of its NPDES Permit.

24. Implementation of Measures to Minimize Discharges of New Industrial Users on the Sewer System during Wet Weather. For the life of this Consent Decree, prior to issuing a permit to a new Industrial User, Fostoria will evaluate the potential permittee's discharges to the Sewer System in accordance with the provisions of Paragraph 22. Fostoria will issue permit conditions sufficient to ensure that new Industrial Users do not contribute to CSOs, including considering prohibiting batch discharges during wet weather. Fostoria will develop minimization measures based, among other things, on the findings and conclusions Fostoria reached in its evaluations under Paragraph 22.

**F. NPDES PERMIT COMPLIANCE**

25. No Dry Weather CSOs. Immediately upon the Date of Lodging of this Consent Decree, Fostoria is prohibited from any and all Dry Weather CSOs.

26. Verification of Discharges from CSO Outfall 007.

a. Commencing in the first full month after Entry of this Consent Decree and continuing for a period of twelve months thereafter, Fostoria will verify one time per month during dry weather that the discharge from CSO Outfall 007 does not contain sanitary wastewater. For purposes of this Paragraph, verification "during dry weather" cannot take place sooner than 48 hours after a CSO.

b. One-Step Procedure. Except as provided in Subparagraph 26.c below, Fostoria will evaluate whether the dry weather discharge from CSO Outfall 007 contains sanitary wastewater by testing for fecal coliform. If the fecal coliform test results exceed 5000 counts/100ml, the discharge will be considered a Dry Weather CSO. Fostoria must report this

Dry Weather CSO in accordance with Subparagraph 26.d, and stipulated penalties pursuant to Paragraph 66 will apply.

c. Optional Procedure. In lieu of utilizing the procedure under Subparagraph 26.b, Fostoria, at its option, may undertake a two part procedure to verify the nature of the discharges from CSO Outfall 007. Fostoria may first undertake a fluorescence/optical brightener test on the discharge from CSO Outfall 007. If the test results are negative, then the discharge will not be considered a Dry Weather CSO. If the test results are positive, Fostoria will test for fecal coliform within two hours of the positive optical brightener test results. If the fecal coliform test results exceed 5000 counts/100ml, the discharge will be considered a Dry Weather CSO. Fostoria must report this Dry Weather CSO in accordance with Subparagraph 26.d, and stipulated penalties pursuant to Paragraph 66 will apply. Fostoria will perform the fluorescence/optical brightener test using the methods and procedures identified in Fostoria's quality assurance procedures included within its Operation and Maintenance Manual. In any given month, Fostoria may utilize only one of the two possible verification procedures for purposes of determining the applicability of stipulated penalties.

d. Report. For any positive test result under Subparagraphs 26.b or 26.c, Fostoria will investigate the cause(s) and will submit a report of the cause(s) to U.S. EPA and Ohio EPA as soon as practicable after the positive test result, taking into account the complexity of the evaluation necessary to identify the cause(s). In the report, Fostoria will identify the corrective measures it has taken or will take as expeditiously as practicable to prevent a recurrence of the cause(s), unless Fostoria demonstrates, and U.S. EPA and Ohio EPA concur, that the test result under Subparagraphs 26.b or 26.c was a false positive. Fostoria may undertake

any form of testing it deems necessary for purposes of evaluating the cause(s) of a positive test result and verifying that the cause(s) has (have) been corrected. Stipulated penalties under Paragraph 66 will not apply to any testing done to determine the cause(s) or verify the effectiveness of corrective measures.

27. Compliance with All Final NPDES Effluent Limitations Except for TSS and CBOD<sub>5</sub>. Immediately upon the Date of Lodging of this Consent Decree, Fostoria will comply with all final effluent limits set forth in its NPDES Permit, except as specified in Paragraph 28.

28. Compliance with Interim Effluent Limitations for TSS and CBOD<sub>5</sub>.

a. Interim Limits: Duration of Applicability. During the periods when the conditions in Paragraph 28.c. and 28.d. are satisfied, the interim limits for CBOD<sub>5</sub> and TSS will apply from the Date of Lodging of this Consent Decree until the earlier of: (i) the completion of the implementation of measures set forth in Fostoria's Evaluation of Control Alternatives Plan designed to eliminate TSS and CBOD<sub>5</sub> effluent limit violations; or (ii) the effective date of the NPDES Permit that supercedes the NPDES Permit that became effective for Fostoria on August 1, 2004.

b. Interim Limits. Interim limits for CBOD<sub>5</sub> and TSS are as follows:

	<u>Concentration (mg/l)</u>		<u>Loading (kg/day)</u>	
	<u>Weekly</u>	<u>Monthly</u>	<u>Weekly</u>	<u>Monthly</u>
CBOD <sub>5</sub>	18.7	12.5	585	391
TSS	21.7	14.5	680	455

c. Interim Limits: Time Periods When Interim Concentration Limits Are in Effect. The interim weekly and monthly CBOD<sub>5</sub> and TSS concentration limits will be in effect when all of the following conditions are met:

- i. At least one sample used in determining the reported weekly or monthly concentration is taken when flow to the WWTP exceeds 8.25 MGD (as measured on a calendar day and not instantaneously); and
- ii. For each such day when flow to the plant exceeds 8.25 MGD, Fostoria operates all treatment units at the WWTP at or near full capacity; and
- iii. For each such day when flow to the plant exceeds 8.25 MGD, Fostoria uses best efforts to maximize flows to the WWTP.

d. Interim Limits: Time Periods When Interim Loading Limits Are in Effect.

The interim weekly and monthly CBOD<sub>5</sub> and TSS loading limits will be in effect when all of the following conditions are met:

- i. At least one sample used in determining the reported weekly or monthly loading is taken when flow to the WWTP exceeds 8.25 MGD (as measured on a calendar day and not instantaneously); and
- ii. For each such day when flow to the WWTP exceeds 8.25 MGD, Fostoria operates all treatment units at the WWTP at or near full capacity; and
- iii. For each such day when flow to the WWTP exceeds 8.25 MGD, Fostoria uses best efforts to maximize flows to the WWTP.

Due to the manner in which interim limits were determined, and in an effort to encourage Fostoria to maximize flow through its WWTP during wet weather events, Fostoria will be entitled to exclude all data points that were generated during any days in which flow to the WWTP exceeded 10 MGD in calculating weekly and monthly loadings for purposes of determining compliance with the interim limits.

e. Stipulated Penalties. Fostoria will not be liable for stipulated penalties for violations of the weekly and monthly CBOD<sub>5</sub> and TSS concentration and loading limits set forth

in Fostoria's NPDES Permit when the interim limits set forth in Paragraph 28.b are in effect. The sampling frequency methodology for CBOD<sub>5</sub> and TSS contained in Fostoria's NPDES Permit will apply to both the interim CBOD<sub>5</sub> and TSS limits set forth in Paragraph 28.b and to the CBOD<sub>5</sub> and TSS limits set forth in Fostoria's NPDES Permit.

f. Reporting. Nothing in Paragraph 28 will be construed to exempt Fostoria from the monitoring requirements set forth in its NPDES Permit, and Fostoria must report all monitoring and sampling data, even if that data is properly excluded from calculating loadings for purposes of this Consent Decree. In its monthly operating reports, Fostoria must identify all data points that it excludes under Paragraph 28.d., and must certify that the conditions for exclusion are met. Fostoria will submit a hard copy of the monthly swimware data (monthly operating report), together with information that supports the conclusion that the conditions for exclusion are met, to Ohio EPA, Northwest District Office, Division of Surface Water, and to U.S. EPA, no later than fifteen (15) days after the month of the occurrence.

29. Compliance with Mercury Effluent Limitations. If Fostoria maintains compliance with its NPDES effluent limitations for mercury for a twelve month period between September 1, 2005, and August 31, 2006, Fostoria will not be required to implement any actions to investigate the causes of prior mercury exceedances. If Fostoria violates its mercury effluent limitations at any time in that twelve month period, Fostoria will undertake the following actions commencing no later than the second full month after Fostoria exceeds its effluent limitations for mercury:

- a. Undertake a six month study of the possible causes of: (i) the mercury exceedance(s) that resulted in having to take action under this Paragraph; and (ii) the mercury exceedances that occurred in the three year period prior to the exceedance(s) that required action under this Paragraph;

- b. Require that each septage hauler sign a certification, under penalty, regarding whether the septage being unloaded is "domestic only" or "other than domestic only" (e.g., mixed domestic and industrial, industrial only, etc.);
- c. For septage that is certified as "other than domestic only," institute and publicize a program to sample and analyze 100% of these septage loads for a twelve month period. Under the program, Fostoria will: (i) analyze all samples for pH, unusual odors or colors before acceptance; (ii) retain samples of each septage load until receipt of that month's effluent and sludge sampling results; and (iii) analyze all such loads for mercury using the "low level" test (U.S. EPA Method 1631 (Revision E)); and
- d. For septage that is certified as "domestic only," institute and publicize a program to randomly sample these loads for mercury. Fostoria will submit its proposal for a random sampling program to U.S. EPA and Ohio EPA no later than the second full month after Fostoria exceeds its effluent limitations for mercury. Fostoria will implement the random sampling program as proposed unless and until U.S. EPA and Ohio EPA provide comments that require Fostoria to modify its random sampling program.

In implementing the sampling program required under Paragraph 29.b - d, Fostoria will undertake all necessary measures to ensure full cost recovery and penalties from any hauler who disposes of septage containing mercury.

**G. LONG-TERM CONTROL PLAN**

30. Submission of Long-Term Control Plan. By no later than the dates set forth in Fostoria's NPDES Permit at Part I,C.B.7, Fostoria will submit to U.S. EPA and Ohio EPA each of the elements that constitute Fostoria's Long-Term Control Plan under Part I,C.B.1 through 6 of Fostoria's NPDES Permit. Fostoria will develop its LTCP in accordance with its NPDES Permit requirements at Part I,C.B. and with the following U.S. EPA Guidances: "Combined Sewer Overflows Guidance for Long-Term Control Plan;" "Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development;" "Guidance:

Coordinating Combined Sewer Overflow (CSO) Long-Term Planning with Water Quality Standards Reviews.” The requirements of Fostoria’s NPDES Permit at Part I,C.B.1 through 7 are incorporated herein by reference and are enforceable under this Consent Decree. Fostoria is required to obtain U.S. EPA approval of the Combined Sewer System Characterization, Monitoring and Modeling Report (described at NPDES Permit Part I,C.B.2 and Paragraph 18 of this Consent Decree) and the Evaluation of Control Alternatives Plan (described at NPDES Permit Part I,C.B.5 and Paragraph 31). Fostoria must obtain Ohio EPA approval of all six plans listed in Fostoria’s NPDES Permit at Part I,C.B.

31. Submission of Evaluation of Control Alternatives Plan. By no later than January 31, 2008, Fostoria will submit to U.S. EPA and Ohio EPA for approval an Evaluation of Control Alternatives Plan, which will include all of the elements set forth at Part I.C.B.5 of Fostoria’s NPDES Permit, including but not limited to an implementation schedule. In addition, Fostoria’s Evaluation of Control Alternatives Plan will:

- a. Provide for the removal of the trickling filters at the WWTP;
- b. Either certify that the measures that it took under Paragraph 16 resulted in long-term, accurate and reliable final effluent monitoring or propose a plan and schedule for the installation of an accurate and reliable final effluent monitor;
- c. Set forth a schedule for the implementation of a study to characterize floatables and solids;
- d. Identify whether Fostoria will continue to utilize the Primary Overflow Containment Lagoon, and if so, set forth a schedule for revamping the Lagoon;
- e. Evaluate the permanent closure of the apertures that have the potential to overflow into the Vine St. stormwater relief sewer in order to render CSO Outfall 007 incapable of discharging anything other than stormwater;

- f. Clearly identify the steps necessary to achieve compliance with final effluent limits for TSS and CBOD<sub>5</sub>; and
- g. Set forth a post-construction monitoring plan.

32. Schedule for Completion of the Construction Planned under the Evaluation of Control Alternatives Plan. Fostoria will develop the implementation schedule in its Evaluation of Control Alternatives Plan with the goal of completing all required construction as expeditiously as possible but in no event later than December 31, 2025. The implementation schedule will include, at a minimum, a construction start date, a construction completion date, one additional interim milestone between the beginning and ending of construction that approximates 50% project completion (based upon the estimated completion date within the general contractor's contract), and the date that all aspects of the plan are expected to be fully operational. Fostoria also will provide a proposed chart (sometimes referred to as a "Gantt chart") that identifies the schedule for beginning and completing all major tasks in the Evaluation of Control Alternatives Plan. To the extent applicable, Fostoria will include in this proposed chart the date of the submission of complete and approvable applications for all necessary permits to install. The proposed chart also will include schedules for how Fostoria expects to obtain the funds necessary to complete construction in accordance with the Evaluation of Control Alternatives Plan. Nothing in this Paragraph will limit the rights of the Parties to agree to modifications of the dates initially set forth in the approved schedule of implementation.

33. Implementation of Evaluation of Control Alternatives Plan. Upon approval by Plaintiffs, Fostoria will implement the approved Evaluation of Control Alternatives Plan in accordance with the schedule therein.

34. Post-Construction Monitoring. Consistent with the schedule in Fostoria's approved Evaluation of Control Alternatives Plan, Fostoria will undertake post-construction monitoring adequate to verify compliance with water quality standards and to ascertain the effectiveness of Fostoria's CSO controls.

## **VI. REPORTING AND PLAINTIFFS' REVIEW AND APPROVAL PROCESS**

### **A. REPORTS**

35. On a quarterly basis on January 31, April 30, July 31, and October 31, of each quarter commencing with the first quarter after Entry of this Consent Decree and continuing until termination, Fostoria will submit to U.S. EPA and Ohio EPA a progress report regarding the implementation of the requirements of this Decree in the previous Calendar Quarter ("Quarterly Progress Report"). The Quarterly Progress Report will include at a minimum:

- a. A description of the projects and activities conducted during the reporting period to comply with the requirements of this Decree;
- b. A summary of all problems or potential problems encountered during the reporting period, and the actions taken to rectify the problems;
- c. A summary of all contacts with U.S. EPA and Ohio EPA during the reporting period, including but not limited to the date deliverables under this Decree were sent to U.S. EPA and Ohio EPA;
- d. A statement of any exceedances of NPDES permit limitations.

Fostoria will retain all data, documents, plans, records, and reports that relate to matters performed by Fostoria pursuant to this Decree for the term of this Decree. This Paragraph does not limit or affect any duty of obligation of Fostoria to maintain records or information required by its NPDES Permit.

**B. CERTIFICATION AND ADMISSIBILITY**

36. All reports required to be submitted by Fostoria pursuant to this Consent Decree will contain a certification signed by a responsible official of Fostoria. The certification will read as follows:

"I certify that the information contained in or accompanying this (submission/document) is true, accurate and complete. As to (the/those) identified portion(s) of this (submission/document) for which I cannot personally verify (its/their) truth and accuracy, I certify as the official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this is true, accurate and complete."

37. Fostoria will not object to the admissibility into evidence of any information provided under the requirements of this Consent Decree or its NPDES Permit in any proceeding to enforce this Consent Decree.

**C. PLAINTIFFS' REVIEW AND APPROVAL OF THE REPORT AND PLAN PREPARED PURSUANT TO PARAGRAPHS 18 AND 31**

38. For the Combined Sewer System Characterization, Monitoring, and Modeling Report and the Evaluation of Control Alternatives Plan for which Fostoria must obtain U.S. EPA's and Ohio EPA's approval pursuant to Paragraphs 18 and 31, respectively, Plaintiffs may: (i) approve the report/plan, in whole or in part; (ii) disapprove the report/plan, in whole or in part; (iii) approve the report/plan upon specified conditions, directing that Fostoria modify its submission; or (iv) any combination of the above. Within 60 days following receipt of a notice of disapproval or direction to modify the submission from Plaintiffs (or within a longer time if set forth in the notice), Fostoria will submit a modified plan that addresses Plaintiffs' concerns. Any stipulated penalties applicable to the submission will accrue during the 60-day period, or such additional period as Plaintiffs and Fostoria may agree to in writing, but will not be payable

unless the resubmission(s) is (are) disapproved in whole or in part due to a defect identified in Plaintiffs' response to Fostoria's earlier plan submission.

39. Notwithstanding the receipt of a notice of disapproval pursuant to the preceding Paragraph, Fostoria will proceed, if directed by Plaintiffs, to take any action required by any nondeficient portion of Fostoria's submission, if such action can be undertaken independent of the deficient portion of Fostoria's submission. Implementation of any nondeficient portion of a submission will not relieve Fostoria of any liability for stipulated penalties.

40. In the event that a resubmitted plan/report or portion thereof is disapproved in whole or in part or approved with conditions by Plaintiffs, Plaintiffs may again require Fostoria to correct the deficiencies or conditions in accordance with the preceding Paragraphs. Plaintiffs also retain the right to modify or develop any disapproved or conditioned portion of the resubmitted plan or report. Fostoria will implement any such plan/report as modified or developed by Plaintiffs, subject only to Fostoria's right to invoke the dispute resolution procedures set forth in Section XIX.

41. If upon resubmission, a plan or report is disapproved or modified in whole or in part by Plaintiffs due to a material defect previously identified and not corrected, Fostoria will be deemed to have failed to submit its plan or report timely and adequately unless Fostoria invokes the dispute resolution procedures set forth in Section XIX, and (i) Plaintiffs either agree to modify their earlier position; or (ii) the Court fails to adopt Plaintiffs' position. If Plaintiffs' disapproval or modification is upheld by the Court, stipulated penalties will accrue for such violation from the date on which the initial submission was originally required. Whether Plaintiffs disapprove of Fostoria's submissions or approve the submissions with modifications

will not affect the burden of proof or the standard of review set forth in Section XIX of this Consent Decree.

**D. MISCELLANEOUS**

42. Upon their approval by Plaintiffs, the Combined Sewer System Characterization, Monitoring, and Modeling Report submitted pursuant to Paragraph 18 and the Evaluation of Control Alternatives Plan developed pursuant to Paragraphs 31 and 32 of this Consent Decree will be incorporated herein as part of this Consent Decree and enforceable hereunder.

**VII. FUNDING**

43. In evaluating the financial impact of implementing any of the alternatives for the Evaluation of Control Alternatives Plan required pursuant to Paragraph 31 and Fostoria's NPDES Permit, Fostoria will evaluate not only residential sewer rates but also possible alternative funding mechanisms, including, but not limited to, commercial and industrial user fees and rate structures, bond revenues, and grant and loan availability.

44. By its signature on this Consent Decree, Fostoria certifies that, as of the date of its signature, its sewer rates are set forth in Ordinance No. 2005-19 (Appendix B to this Consent Decree), and that the rates set forth therein represent the rates in effect on the date of Fostoria's signature.

45. In order for U.S. EPA and Ohio EPA to consider the economic feasibility of the alternatives evaluated and the alternatives proposed for implementation in any plan submitted pursuant to this Consent Decree, on January 31, 2008, Fostoria will provide a certified statement regarding the then-current sewer rates (exclusive of water), a certification of the average annual sewer bill for a household in Fostoria, and the three previous years of the City's Annual Financial

Reports. In addition, Fostoria will provide any other information relevant to economic feasibility that U.S. EPA or Ohio EPA may request.

46. Compliance with the terms of this Consent Decree by Fostoria is not conditioned on the receipt of federal or state grant or loan funds. Failure to comply is not excused by the lack of federal or state grant or loan funds or by the processing of any applications for the same.

### **VIII. CIVIL PENALTY**

47. No later than thirty (30) days following entry of this Consent Decree, Fostoria will pay to the United States a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000) in full satisfaction of the United States' claims for civil penalties alleged in its Complaint. Payment will be made by certified or cashier's check made payable to the "United States Department of Justice" referencing USAO File Number 2003V02426, DOJ Case Number 90-5-1-1-08204, and the civil action case name and case number assigned to this matter by the United States District Court for the Northern District of Ohio. Fostoria will send the check to:

United States Attorney's Office  
Financial Litigation Unit  
Four Seagate, Third Floor  
Toledo, Ohio 43604

In addition, Fostoria will provide notice of payment, referencing USAO File Number 2003V02426, DOJ Case Number 90-5-1-1-08204, and the civil action case name and case number, to DOJ and Region 5 of U.S. EPA, as provided in Section XVI ("Notices and Submissions").

48. No later than thirty (30) Days following entry of this Decree, Fostoria will pay to the State of Ohio a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000) in full

satisfaction of Ohio's claims for civil penalties alleged in its Complaint. Payment will be made by cashier's check or certified funds, payable to "Treasurer, State of Ohio," and will be sent to:

Mark Lemmon, Paralegal  
Attorney General's Office  
Environmental Enforcement Section  
30 East Broad St., 25th Floor  
Columbus, OH 43215-3400

Payment may also be made by electronic transfer to the designated accounts pursuant to instructions sent by Ohio upon request by Fostoria. A copy of the check and transmittal letter or other evidence of payment will also be sent to the Ohio Attorney General's Office and Ohio EPA, as provided in Section XVI ("Notices and Submissions").

49. Fostoria will pay interest on any unpaid balance of the civil penalty owed to the United States, which will begin to accrue at the end of the 30-day period described above, at the rate established by the Department of the Treasury under 31 U.S.C. § 3717. Fostoria will pay interest on any unpaid balance of the civil penalty owed to Ohio, which will begin to accrue at the end of the 30-day period described above, at the rate of ten (10) percent, pursuant to Ohio Revised Code § 1343.03.

50. Upon entry of this Decree, this Decree will constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, and other applicable federal authority. The United States and the State of Ohio will be deemed judgment creditors for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

**IX. STIPULATED PENALTIES**

51. Fostoria will pay to the United States and the State of Ohio stipulated penalties as set forth in Paragraphs below for each day Fostoria fails to satisfy the requirements listed therein.

52. For each failure to visually inspect each CSO Sampler in accordance with the requirements of Paragraph 7.b, \$25 per day of delay.

53. For failure to retain the services of an outside contractor in accordance with the requirements of Paragraph 7.b, \$75 per day for each day that a contract is not in place.

54. For each failure to comply with the repair and replacement requirements of Paragraph 7.c, \$100 per day of delay.

55. For failure to timely complete the cleaning of the Sewer System in accordance with the requirements of Paragraph 9:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1-60	\$ 50
Days 61 - 120	\$ 100
Over 120 days	\$ 200

56. For failure to inspect the Sewer System in accordance with the prioritization of needs set forth in the Sewer System O&M Manual, as required by Paragraph 10:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1-60	\$ 50
Days 61 - 120	\$ 100
Over 120 days	\$ 200

57. For failure to operate and maintain the Primary Overflow Containment Lagoon in accordance with the requirements of Paragraph 11, \$150 per day.

58. For failure to permanently seal all connections between the Fostoria Water Plant and Fostoria's Sewer System as required by Paragraph 12, \$1,000 per day of delay.

59. For failure to operate and maintain rain gauges as required by Paragraph 13, \$300 per day of non-compliance.

60. For failure to annually update the Sewer System mapping as required by Paragraph 14:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1-30	\$ 100
Days 31 - 60	\$ 200
Over 60 Days	\$ 400

61. For failure to operate and maintain an influent flow monitor as required by Paragraph 15:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1-30	\$ 100
Days 31 - 60	\$ 200
Over 60 Days	\$ 400

62. For failure to timely commence implementation of a program to identify and eliminate sources of Inflow into the Sewer System, as required by Paragraph 19:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1 - 60	\$ 100
Days 61 - 120	\$ 200
Over 120 Days	\$ 400

63. For failure to implement the pollution prevention measures required by Paragraphs 20 and 21, \$25 per day.

64. For failure to timely evaluate Industrial Users' discharges that may contribute to CSOs, as required by Paragraph 22, or for failure to implement the measures required by

Paragraph 24:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1 - 60	\$ 100
Days 61 - 120	\$ 200
Over 120 days	\$ 400

65. For Dry Weather CSOs, except for Dry Weather CSOs from CSO Outfall 007, \$4,000 per 24-hour period.

66. For Dry Weather CSOs from CSO Outfall 007, \$6,000 per positive test result under Paragraph 26.b or 26.c.

67. Non-Compliance with Effluent Limitations

a. This Paragraph will apply to: (i) any failure to comply with the effluent limitations in Fostoria's NPDES Permit except that, during the period of the applicability of the interim weekly and monthly CBOD5 and TSS concentration and loading limitations set forth in Paragraph 28 of this Consent Decree, stipulated penalties for violations of the NPDES Permit limitations for those parameters will not apply; (ii) any failure to comply with the weekly and monthly CBOD5 and TSS interim concentration and loading limitations set forth in Paragraph 28 of this Consent Decree, for as long as those interim limitations are applicable; and (iii) any failure to comply with the weekly and monthly CBOD5 and TSS concentration and loading limitations set forth in Fostoria's NPDES Permit when Fostoria fails to satisfy the conditions set forth in Paragraph 28.c and d.

b. Daily Limitations. For each exceedance of a daily effluent limitation, Fostoria will pay \$350.00 per exceedance.

c. Weekly Limitations. For each exceedance of a weekly effluent limitation, Fostoria will pay:

<u>Period of Noncompliance</u>	<u>Penalty per exceedance of the Weekly Average</u>
i. For the first exceedance of a parameter	\$ 500.00
ii. For the second exceedance of the same parameter	\$ 1,000.00
iii. For the third and subsequent exceedances of the same parameter	\$ 1,500.00

d. Monthly Limitations. For each exceedance of a monthly effluent limitation, Fostoria will pay:

<u>Period of Noncompliance</u>	<u>Penalty per Exceedance of the Monthly Average</u>
i. For the first exceedance of a parameter	\$ 1,000.00
ii. For the second exceedance of the same parameter	\$ 2,500.00
iii. For the third and subsequent exceedances of the same parameter	\$ 5,000.00

e. For purposes of calculating stipulated penalties pursuant to this Paragraph, an exceedance of a weekly effluent limitation will constitute one exceedance, not seven exceedances; an exceedance of a monthly effluent limitation will constitute one exceedance, not thirty exceedances.

f. For purposes of calculating stipulated penalties pursuant to this Paragraph, a single operational upset which results in simultaneous daily effluent exceedances for more than one pollutant parameter will be treated as a single exceedance. However, each day on which a daily limitation is exceeded will be treated as a separate exceedance even if the exceedances arise from a single operational upset. Liability for stipulated penalties for weekly and monthly effluent limitations is not affected by the existence of daily maximum exceedance(s) for different parameters that may have arisen from the same operational upset.

g. For purposes of calculating stipulated penalties pursuant to this Paragraph, in overlapping periods where weekly and monthly limitations are exceeded for the same parameter, Fostoria will be liable, upon demand, for stipulated penalties for either the weekly exceedance(s) or the monthly exceedance, whichever is greater. In overlapping periods where daily and monthly effluent limitations are exceeded for the same parameter, Fostoria will be liable, upon demand, for stipulated penalties for either the daily or the monthly exceedance, whichever is greater.

h. For purposes of calculating stipulated penalties pursuant to this Paragraph, and consistent with the definition of "weekly concentration" in Part III.1 of Fostoria's NPDES Permit, a weekly concentration will mean the arithmetic average of all the determinations of the daily concentration limitation made during the seven-day period, except that coliform bacteria limitations compliance will be determined using the geometric mean. Consistent with the definition of "monthly concentration" in Part III.1 of Fostoria's NPDES Permit, a monthly concentration will mean the arithmetic average of all of the determinations of the daily limitation made during the calendar month, except that coliform bacteria limitations compliance will be

determined using the geometric mean. The "weekly period" will be calculated based on discrete, consecutive, non-overlapping seven day periods composed only of days within the same calendar month. The "monthly period" will be calculated based on a calendar month.

i. For purposes of calculating stipulated penalties pursuant to this Paragraph, the first exceedance of a parameter will be subject to the penalty set forth in the same row as the "first exceedance;" the second exceedance of the same parameter will be subject to the penalty set forth in the same row as the "second exceedance;" and three or more exceedances of the same parameter will be subject to the penalty set forth in the same row as the "third and subsequent exceedances." Thus, for example, if Fostoria exceeds its monthly average effluent limitations for copper for two months, the total penalty would be \$3,500 (\$1,000 + \$2,500); the penalty would not be \$5,000 (2 x \$2,500). (This example assumes that the stipulated penalties for the monthly exceedances are greater than the stipulated penalties for any weekly exceedances that might have occurred during that two month period. See Subparagraph 67.g.)

j. For purposes of calculating stipulated penalties for weekly or monthly limitations pursuant to this Paragraph, exceedances for the same parameter will be considered continuous for that parameter -- and the number of exceedances will cumulate -- until there exists a three-month period of compliance for that parameter. Thus, for example, if Fostoria exceeds its monthly limitation for copper in Month 1, Month 2, Month 4, Month 5, Month 8, and Month 12, the exceedances occurring in Months 1-8 will cumulate because no three month period of compliance exists. Thus, the stipulated penalties for Months 1-8 would be \$18,500 [\$1000 + \$2,500 + (3 x \$5,000)]. The stipulated penalty for Month 12 would be \$1,000 because a three month period of compliance intervened between Month 8 and Month 12. For effluent parameters

for which discharge limitations are applicable only during certain months of the year, the months during which no limitations are applicable will not be included in calculating the total number of months of compliance.

68. If Fostoria is required to implement the program under Paragraph 29, for each violation of a requirement of that Paragraph, \$50 per day.

69. For failure to timely submit the plans, reports, or information required by Paragraphs 8.a, 8.b.i, 8.b.iv, 10, 12, 16, 19, 21, 22, 23, 28.f, 35, but if the due date falls on a holiday or weekend, the due date will be the following business day:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1-30	\$ 50
Days 31 - 60	\$ 150
Over 60 Days	\$ 300

70. For failure to timely submit the plans or reports required by Paragraphs 8.b.ii, 17, 30 and 31, but if the due date falls on a holiday or weekend, the due date will be the following business day:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1-30	\$ 150
Days 31 - 60	\$ 300
Over 60 Days	\$ 500

71. Except where Paragraph 70 applies, for failure to comply with the requirements set forth in Paragraphs 31, 32, 33, 34:

<u>Period of Noncompliance</u>	<u>Penalty per Day</u>
Days 1-30	\$ 300
Days 31 - 60	\$ 500
Over 60 Days	\$ 1,000

72. Payment of stipulated penalties as set forth above will be in addition to any other rights or remedies which may be available to the United States or its agencies or to the State of Ohio or its agencies by reason of Fostoria's failure to comply with the requirements of this Consent Decree and all applicable federal, state or local laws, regulations, waste water discharge permit(s) and all other applicable permits. However, in the event that the United States and/or the State of Ohio seek statutory penalties for a violation of any requirement of this Decree for which Fostoria previously has paid a stipulated penalty, the amount of the statutory penalty will be reduced by the amount of the stipulated penalty previously paid.

73. The payment of stipulated penalties will not be construed so as to relieve Fostoria 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.

74. Stipulated penalties will accrue from the first day of noncompliance with any applicable provision of this Consent Decree, but will not be payable until demand. Payment of stipulated penalties will be made within thirty (30) days of the date of a written demand for payment. Written demand by either U.S. EPA or Ohio EPA will constitute written demand from both of those agencies. Fifty (50) percent of the stipulated penalty will be paid to the United States and fifty (50) percent of the stipulated penalty will be paid to the State of Ohio.

75. If any stipulated penalties payable under this Decree to the United States are not paid when due, interest will accrue on any amounts overdue to the United States from the first day after the civil or stipulated penalties are due through the date of payment at the rate of

interest established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. If any stipulated penalties payable under this Decree to Ohio are not paid when due, interest will accrue on any amounts overdue to the State of Ohio from the first day after the stipulated penalties are due through the date of payment at the rate of interest of ten percent pursuant to Ohio Revised Code § 1343.03.

76. Any interest owed or stipulated penalties incurred by Fostoria to the United States will be paid by certified or cashiers check payable to "Treasurer, United States of America," and will reference USAO File Number 2003V02426, DOJ Case Number 90-5-1-1-08204, and the civil action case number and case name of this action assigned to this matter by the United States District Court for the Northern District of Ohio. Checks will be tendered to the United States Attorney's Office, Financial Litigation Unit, Four Seagate, Third Floor, Toledo, Ohio 43604, and will be accompanied by a letter specifying the specific stipulated penalty provision involved, and a description of the violation(s) of this Decree for which the stipulated penalties are being tendered. Simultaneously, a copy of the check and letter will be sent to the Water Division, the Office of Regional Counsel of U.S. EPA Region 5, and U.S. DOJ, as provided in Section XVI ("Notices and Submissions").

77. Any interest owed or stipulated penalties incurred by Fostoria to the State of Ohio will be paid by certified or cashiers check payable to "Treasurer, State of Ohio," accompanied by a copy of the same letter submitted to the United States in the immediately preceding paragraph, and will be sent to:

Mark Lemmon, Paralegal  
Attorney General's Office  
Environmental Enforcement Section  
30 East Broad St., 25th Floor  
Columbus, OH 43215-3400

78. The existence of a dispute will not excuse, toll or suspend any obligation or deadline established by this Consent Decree or any stipulated penalties which accrue as a result of a failure to meet any requirement of this Consent Decree. Stipulated penalties with respect to the disputed matter will continue to accrue but payment will be stayed pending resolution of the dispute as follows:

- 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 will be paid to U.S. EPA within 15 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, Fostoria will pay all accrued penalties determined by the Court to be owed to U.S. EPA within 60 days of receipt of the Court's decision or order, except as provided in subparagraph c below;
- c. If the District Court's decision is appealed by any Party, Fostoria will pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing account within 60 days of receipt of the Court's decision or order. Penalties will 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 will pay the balance of the account to U.S. EPA or to Fostoria to the extent that it prevails.

#### **X. EFFECT OF SETTLEMENT**

79. This Consent Decree is entered into as full and final settlement of this action for all Parties to the following extent: the Consent Decree resolves the civil claims of the United States for the violations alleged in the United States' Complaint through the Date of Lodging of

this Decree and the civil claims of the State of Ohio for the violations alleged in Ohio's Complaint through the Date of Lodging of this Decree.

80. This Consent Decree in no way affects or relieves Fostoria of its responsibility to comply with any federal, state, or local law, regulation, or permit, or to obtain any applicable federal or state permits or approvals including, but not limited to, a permit to install, or to obtain any permit or approval required by state or federal law, including, but not limited to, a permit to install and/or plan approval from Ohio EPA.

81. The Parties agree that Fostoria 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 will be no defense to any actions commenced pursuant to said laws, regulations, or permits. Nothing in the Consent Decree, however, will preclude Fostoria from raising defenses available under its NPDES Permit, or any renewals or modifications thereof, in any such actions.

82. The United States and Ohio expressly reserve all remedies available to them for all violations of the CWA not specifically addressed by Paragraph 79 of this Consent Decree.

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

84. Nothing herein will be construed to limit the authority of the United States to act under Section 308 of the CWA, 33 U.S.C. § 1318.

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

86. This Consent Decree does not limit or affect the rights of Fostoria, the State of Ohio, or the United States as against any third parties.

87. The Consent Decree will not limit any authority of U.S. EPA or Ohio EPA under any applicable statute, including the authority to seek information from Fostoria or to seek access to the property of Fostoria.

#### **XI. NOT A PERMIT**

88. This Consent Decree is not and will not be construed as a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, or Section 6111.03 O.R.C., nor as a modification of any existing permit so issued, nor will it in any way relieve Fostoria of its obligations to obtain a permit for its WWTP, its Sewer System or any other part of its waste water treatment and Sewer System or facilities and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

89. Nothing herein will be construed as relieving Fostoria of the duty to comply with the CWA, the regulations promulgated under the CWA, and all applicable permits issued under the CWA and its regulations.

#### **XII. FAILURE OF COMPLIANCE**

90. The United States and Ohio do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Fostoria's complete compliance with this Consent

Decree will result in compliance with the provisions of the CWA, 33 U.S.C. §§ 1251 et seq., or with Fostoria's NPDES Permit or any future modifications or renewals. Notwithstanding U.S. EPA's and Ohio EPA's review or approval of any plans, reports, policies, or procedures formulated pursuant to this Consent Decree, Fostoria will remain solely responsible for any non-compliance with the terms of this Consent Decree, all applicable permits, the CWA, and regulations promulgated under the CWA. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any NPDES permit will neither affect nor postpone Fostoria's duties and obligations as set forth in this Consent Decree.

### **XIII. CONTINGENT LIABILITY OF THE STATE OF OHIO**

91. Ohio is a party plaintiff hereto pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e). Ohio will have no liability under this Consent Decree, except as required by Section 309(e) of the CWA in the event that the laws of Ohio prevent Fostoria 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 Fostoria from raising revenues needed to comply with this Consent Decree.

### **XIV. RIGHT OF ENTRY**

92. U.S. EPA and Ohio EPA, and their representatives, contractors, consultants, and attorneys will have the right of entry into and upon Fostoria's WWTP and Sewer System, 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 Fostoria or its consultants;
- d. Inspecting and evaluating any portions of Fostoria's WWTP and Sewer System;
- e. Inspecting and reviewing any records required to be kept under the terms and conditions of the Consent Decree, Fostoria's NPDES Permit, any future modifications or renewals thereof, and the CWA;
- f. Otherwise assessing Fostoria's compliance with this Consent Decree.

93. This Section 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.

#### **XV. RECORD RETENTION**

94. Fostoria will maintain copies of any underlying research and data in its possession, custody or control for any and all documents, reports, plans, or studies submitted to U.S. EPA or Ohio EPA pursuant to this Consent Decree or pursuant to Fostoria's NPDES Permit for a period of five (5) years from date of submission. Fostoria will require any independent contractor implementing any portion of this Consent Decree to also retain such materials for a period of five (5) years from date of submission. Fostoria will submit such supporting documents to U.S. EPA and/or Ohio EPA upon request. Fostoria will provide U.S. EPA and Ohio EPA with written notification 15 business days prior to the destruction of any documents required to be retained under this Decree.

#### **XVI. NOTICES AND SUBMISSIONS**

95. 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

State of Ohio, Ohio EPA, and Fostoria is required by the terms of this Consent Decree, it will 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. 90-5-1-1-08204

As to Region 5 of 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

Deirdra Tanaka  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson, Blvd.  
Chicago, Illinois 60604

As to the State of Ohio:

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,

Chief  
Environmental Enforcement Section  
State of Ohio Office of Attorney General  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3400

As to Fostoria

Safety Service Director  
213 South Main St.  
P.O. Box 1007  
Fostoria, OH 44830

All notifications or communications will be deemed submitted on the date they are postmarked and sent by first class mail or certified mail.

**XVII. FORCE MAJEURE BETWEEN THE UNITED STATES AND FOSTORIA**

96. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of Fostoria or the control of any entity controlled by Fostoria, including its agents, consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances will not, in any event, be considered 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 that is necessary to meet the requirements of this Consent Decree, or failure of the City to approve contracts, will not, in any event, be considered Force Majeure events.

97. When Fostoria knows or should have known, by the exercise of due diligence, of an event that might delay completion of any requirement of this Consent Decree, whether or not the event is a Force Majeure event, Fostoria will notify U.S. EPA, in writing, within fourteen (14) days after Fostoria first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice will indicate whether Fostoria claims that the delay should be excused due to a Force Majeure event. The notice will describe

in detail the basis for Fostoria's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Fostoria will adopt all reasonable measures to avoid or minimize such delay. Failure to timely notify U.S. EPA may, at U.S. EPA's option, render this Section void and of no effect as to the event in question, and may be a waiver of Fostoria's right to obtain an extension of time for its obligations based on such event.

98. If U.S. EPA finds that a delay in performance is, or was, caused by a Force Majeure event, it will extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties will not be due to the United States for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XIX (Dispute Resolution) will apply, and Fostoria will 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.

99. An extension of one compliance date based on a particular event will not extend any other compliance date. Fostoria will make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

#### **XVIII. POTENTIAL FORCE MAJEURE BETWEEN OHIO AND FOSTORIA**

100. If any event occurs that causes or may cause Fostoria to violate any requirement of this Consent Decree, whether or not due to a Force Majeure event, Fostoria will so notify Ohio EPA, in writing, within fourteen (14) days after Fostoria knew, or in the exercise of due diligence should have known of the event. The notice will describe in detail the bases for Fostoria'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. Fostoria shall adopt all reasonable measures to avoid or minimize any such violation.

101. In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, Fostoria 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 Fostoria 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 a proceeding to enforce this Consent Decree is commenced by the State. At that time, Fostoria will bear the burden of proving that any delay was or will be caused by circumstances beyond the control of Fostoria. Failure by Fostoria to timely comply with the notice requirements of the preceding Paragraph may constitute, at Ohio EPA's discretion, a waiver by Fostoria 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 will not in any event constitute circumstances beyond the control of Fostoria or serve as a basis for an extension of time under this Decree.

#### **XIX. DISPUTE RESOLUTION**

102. Any dispute that arises between Fostoria and Plaintiffs with respect to the meaning or application of any of the requirements of this Consent Decree will be, in the first

instance, the subject of informal negotiations between Plaintiffs and Fostoria in an attempt to resolve any such dispute. Such period of informal negotiations will not extend beyond forty-five (45) days of the date when a written notice of a dispute is given by one Party to the other, unless the Parties have agreed in writing to extend that period. After informal negotiations, if Fostoria and Plaintiffs are unable to agree upon the meaning or application of the requirements of this Consent Decree, then Fostoria will comply with the position taken by Plaintiffs, subject only to Fostoria's right to petition the Court as set forth in Paragraph 103, below. This dispute resolution process shall not apply to the issuance, renewal, modification, denial or revocation of a permit or plan approval and the issuance of orders or other actions of the Director of Environmental Protection (Ohio EPA).

103. Within forty-five (45) days of the end of the informal negotiations period for resolution of the dispute set forth in Paragraph 102, above, Fostoria may petition the Court for relief. Such petition will set forth the nature of the dispute and a proposal for its resolution. Plaintiffs will have forty-five (45) days to respond to the petition and propose an alternate resolution. In any such dispute, Fostoria will bear the burden of proof. Applicable principles of law regarding the standard of review will apply.

104. The filing of a petition asking the Court to resolve a dispute will not in and of itself extend or postpone any obligation of Fostoria under this Consent Decree, provided that payment of any stipulated penalties with respect to the disputed matter will be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties will accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Fostoria does not prevail on the disputed issue, stipulated penalties, if

applicable and demanded, will be assessed and paid as provided in Section IX ("Stipulated Penalties").

#### **XX. RETENTION OF JURISDICTION**

105. This Court will retain jurisdiction of this matter for the purposes of construing, implementing, administering, and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the parties that may arise under the provisions of this Consent Decree.

#### **XXI. MODIFICATION**

106. Any non-material modification of this Decree by agreement of the Parties will be in writing and will be filed with the Court. Any material modification of this Decree by agreement of the Parties will be in writing and will be filed with the Court for approval. Nothing in this Decree will be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

#### **XXII. TERMINATION**

107. Two years after the City of Fostoria has completed all construction required by its approved Evaluation of Control Alternatives Plan, Fostoria may seek, in writing, approval from U.S. EPA and Ohio EPA for termination of this Decree. In addition to certifying that all required construction is complete and that at least twelve months of post-construction monitoring shows the effectiveness of Fostoria's CSO controls, Fostoria also will certify that it is and has been in compliance with its NPDES Permit for at least twelve (12) months, that all civil penalties due and all stipulated penalties demanded under this Decree have been paid, and that Fostoria has complied with all other requirements of this Decree. Unless, within ninety (90) days of receipt of

Fostoria's certification under this Paragraph, either the United States or the State of Ohio objects in writing with specific reasons, the Court may, upon motion by Fostoria, order that this Consent Decree be terminated. If either the United States or the State of Ohio objects to the certification by Fostoria then the matter will be submitted to the Court for resolution under Section XIX (Dispute Resolution) of this Consent Decree. In such case, Fostoria will bear the burden of proving that this Consent Decree should be terminated.

### **XXIII. FINAL JUDGMENT**

108. Entry of this Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

### **XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

109. This Consent Decree will be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the public comments regarding this Decree disclose facts or considerations which indicate that this Decree is inappropriate, improper, or inadequate. Fostoria will not withdraw its consent to this Decree during the period of governmental and judicial review that occurs between lodging and entry of this Decree, and Fostoria hereby consents to the entry of this Decree without further notice.

110. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

**XXV. SIGNATORIES**

111. The undersigned representative of each of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the Parties to this document.

**XXVI. EFFECTIVE DATE**

112. The effective date of this Decree will be the date of entry by this Court.

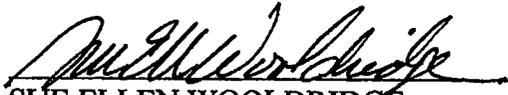
SO ORDERED THIS 28th DAY OF August, 2006.

*s/ Jack Zouhary*

\_\_\_\_\_  
United States District Judge

The undersigned party hereby consents to the Consent Decree in the matter of United States and Ohio v. City of Fostoria (N.D. Ohio).

FOR THE UNITED STATES

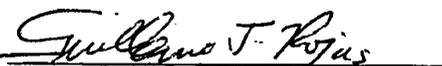
  
SUE ELLEN WOOLDRIDGE

Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

  
ANNETTE M. LANG

Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
Phone: (202) 514-4213  
Fax: (202) 616-6584

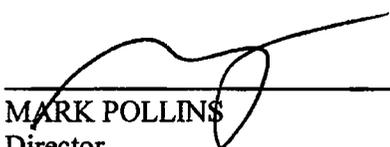
GREGORY A. WHITE  
United States Attorney  
for the Northern District of Ohio

  
GUILLERMO "BILL" J. ROJAS

Assistant United States Attorney  
Northern District of Ohio  
Four Seagate, Suite 308  
Toledo, OH 43604  
Phone: (419) 259-6376  
Fax: (419) 259-6360

The undersigned party hereby consents to the Consent Decree in the matter of United States and Ohio v. City of Fostoria (N.D. Ohio).

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY



---

MARK POLLINS

Director

Water Enforcement Division

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW

Washington, DC 20460

OF COUNSEL:

ROBERT G. KLEPP

Attorney

Office of Civil Enforcement

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW

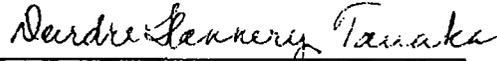
Washington, DC 20460

The undersigned party hereby consents to the Consent Decree in the matter of United States and Ohio v. City of Fostoria (N.D. Ohio).

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY



BHARAT MATHUR  
Acting Regional Administrator  
U.S. EPA Region 5



DEIRDRE FLANNERY TANAKA  
Associate Regional Counsel  
U.S. EPA Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

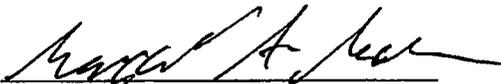
The undersigned party hereby consents to the Consent Decree in the matter of United States and Ohio v. City of Fostoria (N.D. Ohio).

APPROVED:

FOR THE STATE OF OHIO

JIM PETRO  
ATTORNEY GENERAL

By:

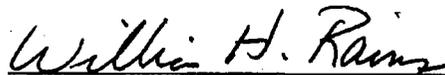


Margaret A. Malone  
Todd K. DeBoe  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, OH 43215-3400  
Phone: (614) 466-2766  
Fax: (614) 644-1926

Attorneys for the State of Ohio

The undersigned party hereby consents to the Consent Decree in the matter of United States and Ohio v. City of Fostoria (N.D. Ohio).

FOR THE CITY OF FOSTORIA



WILLIAM H. RAINS  
Safety Service Director  
City of Fostoria  
213 South Main St.  
P.O. Box 1007  
Fostoria, OH 44830

# APPENDIX A

Application No. OH0052744

Issue Date: June 21, 2004

Effective Date: August 1, 2004

Expiration Date: July 31, 2009

**RECEIVED**  
JUL 01 2004

NPDES SUPPORT &  
TECHNICAL ASSIST BR.  
EPA, REGION 5

**Ohio Environmental Protection Agency  
Authorization to Discharge Under the  
National Pollutant Discharge Elimination System**

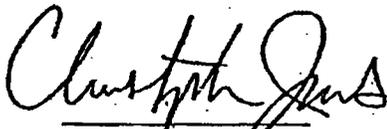
In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq., hereinafter referred to as the "Act"), and the Ohio Water Pollution Control Act (Ohio Revised Code Section 6111),

**City of Fostoria**

is authorized by the Ohio Environmental Protection Agency, hereinafter referred to as "Ohio EPA," to discharge from the City of Fostoria WWTP wastewater treatment works located at 1301 Perrysburg Road, Fostoria, Ohio, Seneca County and discharging to East Branch of Portage River in accordance with the conditions specified in Parts I, II, and III of this permit.

This permit is conditioned upon payment of applicable fees as required by Section 3745.11 of the Ohio Revised Code.

This permit and the authorization to discharge shall expire at midnight on the expiration date shown above. In order to receive authorization to discharge beyond the above date of expiration, the permittee shall submit such information and forms as are required by the Ohio EPA no later than 180 days prior to the above date of expiration.



**Christopher Jones  
Director**

Part I, A. - INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

LF 2200031.1 (1)

1. During the period beginning on the effective date of this permit and lasting until 32 months from the effective date, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from the following outfall: 2PD00031001. See Part II, OTHER REQUIREMENTS, for locations of effluent sampling.

Table - Final Outfall - 001 - Initial - 001 - Initial

Effluent Characteristic Parameter	Discharge Limitations				Monitoring Requirements		
	Concentration	Specified Units	Weekly	Monthly	Measuring Frequency	Sampling Type	Monitoring Months
00010 - Water Temperature - C	-	-	-	-	1/Day	Maximum Indicating Thermometer	All
00045 - Total Precipitation - Inches	-	-	-	-	1/Day	24hr Total	All
00300 - Dissolved Oxygen - mg/l	-	5.0	-	-	1/Day	Multiple Grab	Winter
00300 - Dissolved Oxygen - mg/l	-	7.0	-	-	1/Day	Multiple Grab	Summer
00515 - Residue, Total Dissolved - mg/l	-	-	-	-	1/Month	Composite	All
00530 - Total Suspended Solids - mg/l	-	18	12	-	3/Week	Composite	All
00556 - Oil and Grease, Freon Extr-Grav Meth - mg/l	10	-	-	-	1/2 Weeks	Grab	All
00610 - Nitrogen, Ammonia (NH3) - mg/l	-	4.2	2.8	-	3/Week	Composite	Mar-May & Oct-Nov
00610 - Nitrogen, Ammonia (NH3) - mg/l	-	6.0	4.0	-	3/Week	Composite	Dec. - Feb.
00610 - Nitrogen, Ammonia (NH3) - mg/l	-	2.3	1.5	-	3/Week	Composite	June - Sep
00625 - Nitrogen Kjeldahl, Total - mg/l	-	-	-	-	1/Month	Composite	All
00630 - Nitrite Plus Nitrate, Total - mg/l	-	-	-	-	1/Month	Composite	All
00665 - Phosphorus, Total (P) - mg/l	-	1.5	1.0	-	1/Week	Composite	All
00719 - Cyanide, Free - mg/l	-	-	-	-	1/Quarter	Grab	Quarterly
01074 - Nickel, Total Recoverable - ug/l	-	-	-	-	1/Quarter	Composite	Quarterly
01084 - Strontium, Total Recoverable - ug/l	-	-	-	-	1/Month	Composite	All
01094 - Zinc, Total Recoverable - ug/l	-	-	-	-	1/Month	Composite	All
01113 - Cadmium, Total Recoverable - ug/l	-	-	-	-	1/Month	Composite	All

Effluent Characteristic	Parameter	Discharge Limitations					Monitoring Requirements					
		Concentration	Specified Units	Maximum	Minimum	Weekly	Monthly	Daily	Loading* Weekly	kg/day	Measuring Frequency	Sampling Type
110114 - Lead, Total Recoverable - ug/l		-	-	-	-	-	-	-	-	1/Quarter	Composite	Quarterly
190118 - Chromium, Total Recoverable - ug/l		-	-	-	-	-	-	-	-	1/Quarter	Composite	Quarterly
801119 - Copper, Total Recoverable - ug/l		49	-	-	-	30	1.53	-	0.94	1/Month	Composite	All
101220 - Chromium, Dissolved Hexavalent - ug/l		-	-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly
801268 - Antimony, Total Recoverable - ug/l		-	-	-	-	-	-	-	-	1/Month	Composite	All
31616 - Fecal Coliform - #/100 ml		-	-	2000	1000	-	-	-	-	3/Week	Grab	Summer
39100 - Bis(2-ethylhexyl) Phthalate - ug/l		-	-	-	-	-	-	-	-	1/Quarter	Composite	Quarterly
50050 - Flow Rate - MGD		-	-	-	-	-	-	-	-	1/Day	Continuous	All
50286 - Mercury, Total (Low Level, PQL=1000) - ng/l		1100	-	-	-	1.3	0.034	-	0.00004	1/Month	Grab	All
61425 - Acute Toxicity, Ceriodaphnia dubia - TUa		-	-	-	-	-	-	-	-	2/Year	Composite	Semi-annual - 5
61426 - Chronic Toxicity, Ceriodaphnia dubia - TUc		-	-	-	-	-	-	-	-	2/Year	Composite	Semi-annual - 5
61427 - Acute Toxicity, Pimephales promelas - TUa		-	-	-	-	-	-	-	-	2/Year	Composite	Semi-annual - 5
61428 - Chronic Toxicity, Pimephales promelas - TUc		-	-	-	-	-	-	-	-	2/Year	Composite	Semi-annual - 5
61941 - pH, Maximum - S.U.		9.0	-	-	-	-	-	-	-	1/Day	Multiple Grab	All
61942 - pH, Minimum - S.U.		-	-	6.5	-	-	-	-	-	1/Day	Multiple Grab	All
80082 - CBOD 5 day - mg/l		-	-	15	10	-	-	469	313	3/Week	Composite	All

Effluent loadings based on average design flow of 8.25 MGD.

Nickel, zinc, cadmium, lead, total chromium, and copper - See Part II, Item O.

Dissolved hexavalent chromium - See Part II, Item P.

Mercury - See Schedule of Compliance Item A, and Part II, Items L and P.

Free cyanide - See Part II, Items P and T.

2PDD0031-ND

Whole effluent toxicity - See Part II, Item U. Beginning not later than three months from the effective date of this permit, chronic toxicity and acute toxicity shall be monitored twice per year during May and November.

Semi-annual-5 - May and November.

Part I, A. - INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. During the period beginning 32 months from the effective date of this permit and lasting until 58 months from the effective date, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from the following outfall:  
2PDD00031001. See Part II, OTHER REQUIREMENTS, for locations of effluent sampling.

Table - Final Outfall - 001 - Interim

Effluent Characteristic Parameter	Discharge Limitations				Monitoring Requirements					
	Concentration	Specified Units	Weekly	Monthly	Daily	Loading* Weekly	Monthly	Measuring Frequency	Sampling Type	Monitoring Months
00010 - Water Temperature - C	-	-	-	-	1/Day	-	-	1/Day	Maximum Indicating Thermometer	All
00045 - Total Precipitation - Inches	-	-	-	-	1/Day	-	-	1/Day	24hr Total	All
00300 - Dissolved Oxygen - mg/l	5.0	-	-	-	1/Day	-	-	1/Day	Multiple Grab	Winter
00300 - Dissolved Oxygen - mg/l	7.0	-	-	-	1/Day	-	-	1/Day	Multiple Grab	Summer
00515 - Residue, Total Dissolved - mg/l	-	-	-	-	1/Month	-	-	1/Month	Composite	All
00530 - Total Suspended Solids - mg/l	-	-	18	12	3/Week	563	375	3/Week	Composite	All
00556 - Oil and Grease, Freon Extr-Grav Meth - mg/l	10	-	-	-	1/2 Weeks	-	-	1/2 Weeks	Grab	All
00610 - Nitrogen, Ammonia (NH3) - mg/l	-	-	2.3	1.5	3/Week	71.9	46.9	3/Week	Composite	June - Sep
00610 - Nitrogen, Ammonia (NH3) - mg/l	-	-	4.2	2.8	3/Week	131.4	87.6	3/Week	Composite	Mar-May & Oct-Nov
00610 - Nitrogen, Ammonia (NH3) - mg/l	-	-	6.0	4.0	3/Week	187.7	125.1	3/Week	Composite	Dec. - Feb.
00625 - Nitrogen Kjeldahl, Total - mg/l	-	-	-	-	1/Month	-	-	1/Month	Composite	All
00630 - Nitrite Plus Nitrate, Total - mg/l	-	-	-	-	1/Month	-	-	1/Month	Composite	All
00665 - Phosphorus, Total (P) - mg/l	-	-	1.5	1.0	1/Week	46.9	31.3	1/Week	Composite	All
00719 - Cyanide, Free - mg/l	-	-	-	-	1/Quarter	-	-	1/Quarter	Grab	Quarterly
01074 - Nickel, Total Recoverable - ug/l	-	-	-	-	1/Quarter	-	-	1/Quarter	Composite	Quarterly
01084 - Strontium, Total Recoverable - ug/l	-	-	-	-	1/Month	-	-	1/Month	Composite	All
01094 - Zinc, Total Recoverable - ug/l	-	-	-	-	1/Month	-	-	1/Month	Composite	All
01113 - Cadm, Total Recoverable - ug/l	-	-	-	-	1/Month	-	-	1/Month	Composite	All

Effluent Characteristic Parameter	Discharge Limitations				Monitoring Requirements						
	Concentration	Specified Units	Maximum	Minimum	Weekly	Monthly	Daily	Loading* kg/day	Measuring Frequency	Sampling Type	Monitoring Months
901114 - Lead, Total Recoverable - ug/l	-	-	-	-	-	-	-	-	-	1/Quarter	Quarterly
901118 - Chromium, Total Recoverable - ug/l	-	-	-	-	-	-	-	-	-	1/Quarter	Quarterly
901119 - Copper, Total Recoverable - ug/l	49	-	-	-	-	30	1.53	-	0.94	1/Month	All
901220 - Chromium, Dissolved Hexavalent - ug/l	-	-	-	-	-	-	-	-	-	1/Quarter	Quarterly
901268 - Antimony, Total Recoverable - ug/l	-	-	-	-	-	-	-	-	-	1/Month	All
31616 - Fecal Coliform - #/100 ml	-	-	2000	1000	-	-	-	-	-	3/Week	Summer
39100 - Bis(2-ethylhexyl) Phthalate - ug/l	-	-	-	-	-	-	-	-	-	1/Quarter	Quarterly
50050 - Flow Rate - MGD	-	-	-	-	-	-	-	-	-	1/Day	All
50286 - Mercury, Total (Low Level, PQL=1000) - ng/l	1100	-	-	1.3	0.034	-	-	-	0.00004	1/Month	All
61941 - pH, Maximum - S.U.	9.0	-	-	-	-	-	-	-	-	1/Day	All
61942 - pH, Minimum - S.U.	-	6.5	-	-	-	-	-	-	-	1/Day	All
80082 - CBOD 5 day - mg/l	-	-	15	10	-	-	-	469	313	3/Week	All

NOTES for Station Number 2PDU0031001:

Effluent loadings based on average design flow of 8.25 MGD.

Nickel, zinc, cadmium, lead, total chromium, and copper - See Part II, Item O.

Dissolved hexavalent chromium - See Part II, Item P.

Mercury - See Schedule of Compliance Item A, and Part II, Items L and P.

Cyanide - See Part II, Items P and T.

Part I, A. - FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

3. During the period beginning 58 months from the effective date of this permit and lasting until the expiration date, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from the following outfall: 2PD00031001. See Part II, OTHER REQUIREMENTS, for locations of effluent sampling.

Table - Final Outfall - 001 - Final

Effluent Characteristic	Discharge Limitations				Monitoring Requirements			
	Parameter	Concentration	Specified Units	Maximum Minimum	Loading* kg/day	Measuring Frequency	Sampling Type	Monitoring Months
00010 - Water Temperature - C	-	-	-	-	-	1/Day	Maximum Indicating Thermometer	All
00045 - Total Precipitation - Inches	-	-	-	-	-	1/Day	24hr Total	All
00000 - Dissolved Oxygen - mg/l	-	7.0	-	-	-	1/Day	Multiple Grab	Summer
00000 - Dissolved Oxygen - mg/l	-	5.0	-	-	-	1/Day	Multiple Grab	Winter
00030 - Total Suspended Solids - mg/l	-	-	18	12	563	3/Week	Composite	All
00056 - Oil and Grease, Freon Extr-Grav Meq/l - mg/l	10	-	-	-	-	1/2 Weeks	Grab	All
00010 - Nitrogen, Ammonia (NH3) - mg/l	-	-	2.3	1.5	71.9	3/Week	Composite	June - Sep
00010 - Nitrogen, Ammonia (NH3) - mg/l	-	-	4.2	2.8	131.4	3/Week	Composite	Mar-May & Oct-Nov
00010 - Nitrogen, Ammonia (NH3) - mg/l	-	-	6.0	4.0	187.7	3/Week	Composite	Dec. - Feb.
00025 - Nitrogen Kjeldahl, Total - mg/l	-	-	-	-	-	1/Month	Composite	All
00030 - Nitrite Plus Nitrate, Total - mg/l	-	-	-	-	-	1/Month	Composite	All
00065 - Phosphorus, Total (P) - mg/l	-	1.5	1.0	-	46.9	1/Week	Composite	All
00019 - Cyanide, Free - mg/l	-	-	-	-	-	1/Quarter	Grab	Quarterly
01074 - Nickel, Total Recoverable - ug/l	-	-	-	-	-	1/Quarter	Composite	Quarterly
01084 - Strontium, Total Recoverable - ug/l	-	-	-	-	-	1/Month	Composite	All
01094 - Zinc, Total Recoverable - ug/l	-	-	-	-	-	1/Month	Composite	All
01113 - Cadmium, Total Recoverable - ug/l	-	-	-	-	-	1/Month	Composite	All

Effluent Characteristic	Parameter	Discharge Limitations				Monitoring Requirements					
		Concentration	Maximum Minimum	Weekly Monthly	Daily	Loading* kg/day	Measuring Frequency	Sampling Type	Monitoring Months		
801114 - Lead, Total Recoverable - ug/l		-	-	-	-	-	-	-	1/Quarter	Composite	Quarterly
801118 - Chromium, Total Recoverable - ug/l		-	-	-	-	-	-	-	1/Quarter	Composite	Quarterly
801119 - Copper, Total Recoverable - ug/l		49	-	-	30	1.53	-	0.94	1/Month	Composite	All
801220 - Chromium, Dissolved Hexavalent - ug/l		-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly
01268 - Antimony, Total Recoverable - ug/l		-	-	-	-	-	-	-	1/Month	Composite	All
001616 - Fecal Coliform - #/100 ml		-	-	2000	1000	-	-	-	3/Week	Grab	Summer
009100 - Bis(2-ethylhexyl) Phthalate - ug/l		-	-	-	-	-	-	-	1/Quarter	Composite	Quarterly
00050 - Flow Rate - MGD		-	-	-	-	-	-	-	1/Day	Continuous	All
00286 - Mercury, Total (Low Level, Hg <sub>TOT</sub> =1000) - ng/l		1100	-	-	1.3	0.034	-	0.00004	1/Month	Grab	All
61425 - Acute Toxicity, Ceriodaphnia - TUa		1.0	-	-	-	-	-	-	2/Year	Composite	Semi-annual - 5
61426 - Chronic Toxicity, Ceriodaphnia - TUc		-	-	-	1.0	-	-	-	2/Year	Composite	Semi-annual - 5
61427 - Acute Toxicity, Pimephales - TUa		1.0	-	-	-	-	-	-	2/Year	Composite	Semi-annual - 5
61428 - Chronic Toxicity, Pimephales - TUc		-	-	-	1.0	-	-	-	2/Year	Composite	Semi-annual - 5
51941 - pH, Maximum - S.U.		9.0	-	-	-	-	-	-	1/Day	Multiple Grab	All
51942 - pH, Minimum - S.U.		-	6.5	-	-	-	-	-	1/Day	Multiple Grab	All
800082 - CBOD 5 day - mg/l		-	-	15	10	-	469	313	3/Week	Composite	All

NOTES for Station Number 2PD00031001:

Effluent loadings based on average design flow of 8.25 MGD.

Nickel, zinc, cadmium, lead, total chromium, and copper - See Part II, Item O.

Dissolved hexavalent chromium - See Part II, Item P.

Mercury - See Schedule of Compliance Item A, and Part II, Items L and P.

Free cyanide - See Part II, Items P and T.

Whole effluent toxicity - See Part II, Item U. The final effluent limits and monitoring requirements for whole effluent toxicity become effective only if the permittee receives written notification from Ohio EPA that a toxicity reduction evaluation (TRE) is required.  
Semi-annual - May and November.

Part I, B. - DOWNSTREAM-NEARFIELD MONITORING REQUIREMENTS

2PD00031\*ND

1. Downstream-Nearfield Monitoring. During the period beginning on the effective date of this permit and lasting until the expiration date, the permittee shall monitor the receiving stream, downstream of the point of discharge, at Station Number 2PD00031901, and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of sampling.

Table - Downstream-Nearfield Monitoring - Final

Effluent Characteristic Parameter	Discharge Limitations				Monitoring Requirements					
	Concentration	Specified Units	Weekly	Monthly	Daily	Weekly	Monthly	Measuring Frequency	Sampling Type	Monitoring Months
00010 - Water Temperature - C	-	-	-	-	-	-	-	1/Month	Grab	All
00300 - Dissolved Oxygen - mg/l	-	-	-	-	-	-	-	1/Month	Grab	All
00400 - pH - S.U.	-	-	-	-	-	-	-	1/Month	Grab	All
00610 - Nitrogen, Ammonia (NH3) - mg/l	-	-	-	-	-	-	-	1/Month	Grab	All
00720 - Cyanide, Total - mg/l	-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly
00900 - Hardness, Total (CaCO3) - mg/l	-	-	-	-	-	-	-	1/Month	Grab	All
01074 - Nickel, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly
01094 - Zinc, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
01113 - Cadmium, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
01114 - Lead, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly
01118 - Chromium, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly
01119 - Copper, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
01220 - Chromium, Dissolved Hexavalent - ug/l	-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly
01616 - Fecal Coliform - #/100 ml	-	-	-	-	-	-	-	1/Month	Grab	Summer

NOTES for Station Number 2PD00031901:

Nickel, zinc, cadmium, lead, total chromium, copper, dissolved hexavalent chromium and total cyanide - See Part II, Item O.

Part I, B. - BYPASS MONITORING LIMITATIONS AND MONITORING REQUIREMENTS

2. Bypass Monitoring. During the period beginning on the effective date of this permit and lasting until the expiration date, the permittee shall monitor the treatment plant's bypass when discharging, at Station Number 2PD00031009, and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of sampling.

Table - Bypass Monitoring - 009 - Final

Effluent Characteristic Parameter	Discharge Limitations				Monitoring Requirements						
	Concentration	Specified Units	Maximum	Minimum	Weekly	Daily	Weekly	Monthly	Measuring Frequency	Sampling Type	Monitoring Months
30100 - Total Suspended Solids - mg/l	-	-	-	-	-	-	-	-	When Disch.	Grab	All
50100 - Flow Rate - MGD	-	-	-	-	-	-	-	-	When Disch.	Continuous	All
80102 - CBOD 5 day - mg/l	-	-	-	-	-	-	-	-	When Disch.	Grab	All
80998 - Bypass Occurrence, Number per month - No./Month	-	-	-	-	-	-	-	-	When Disch.	Continuous	All
80999 - Bypass Duration, Hours per month - Hr./Month	-	-	-	-	-	-	-	-	When Disch.	Continuous	All

NOTES for Station Number 2PD00031009:

A Monthly Operating Report (Form 4500) for this station must be submitted every month.

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

All parameters shall be monitored and reported on each day that a discharge occurs.

If there are no discharges during the entire month:

- 1) Report "AL" in the first column of the first day of the month on the 4500 Form.
- 2) Sign the form.

Treatment plant bypass is prohibited except under emergency conditions as authorized by federal regulation at 40 CFR 122.41(m) and Part III, Item 1.1, General Conditions, of this permit.

Part I, B. - SLUDGE MONITORING REQUIREMENTS

3. Sludge Monitoring. During the period beginning on the effective date of this permit and lasting until the expiration date, the permittee shall monitor the treatment works' final sludge at Station Number 2PPD00031586, and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of sludge sampling.

Table - Sludge Monitoring - 586 - Final

Effluent Characteristic Parameter	Discharge Limitations				Monitoring Requirements		
	Concentration Specified	Units	Loading* kg/day	Measuring Frequency	Sampling Type	Monitoring Months	
0316 - Sludge Weight - Dry Tons				When Disch.	Total	All	

NOTES for Station Number 2PPD00031586:

Monitoring is required when sludge is removed from the wastewater treatment facility and disposed of by hauling to a mixed solid waste landfill. If no sludge is removed during the entire month, report "AL" in the first column of the first day of the month on the 4500 Form (Monthly Operating Report). A signature is still required.

Sludge weight is a calculated total for the sampling period.

See Part II, Item R.

Part I, B. - INFLUENT MONITORING REQUIREMENTS

4. Influent Monitoring. During the period beginning on the effective date of this permit and lasting until the expiration date, the permittee shall monitor the treatment works' influent wastewater at Station Number 2PD00031601, and report to the Ohio EPA in accordance with the following table. Samples of influent used for determination of net values or percent removal must be taken the same day as those samples of effluent used for that determination. See Part II, OTHER REQUIREMENTS, for location of influent sampling.

Table - Influent Monitoring - 601 - Final

Effluent Characteristic Parameter	Discharge Limitations				Monitoring Requirements					
	Concentration Specified	Maximum Minimum	Weekly	Monthly	Daily	Loading* Weekly	Monthly	Measuring Frequency	Sampling Type	Monitoring Months
00030 - Total Suspended Solids - mg/l	-	-	-	-	-	-	-	3/Week	Composite	All
00020 - Cyanide, Total - mg/l	-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly
01074 - Nickel, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Quarter	Composite	Quarterly
01094 - Zinc, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Composite	All
01013 - Cadmium, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Composite	All
01014 - Lead, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Quarter	Composite	Quarterly
01018 - Chromium, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Quarter	Composite	Quarterly
01019 - Copper, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Composite	All
01020 - Chromium, Dissolved Hexavalent - ug/l	-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly
50066 - Mercury, Total (Low Level, PQL = 1000) - ng/l	-	-	-	-	-	-	-	1/Month	Grab	All
61041 - pH, Maximum - S.U.	-	-	-	-	-	-	-	1/Day	Grab	All
61042 - pH, Minimum - S.U.	-	-	-	-	-	-	-	1/Day	Grab	All
80062 - CBOD 5 day - mg/l	-	-	-	-	-	-	-	3/Week	Composite	All

NOTES for Station Number 2PD00031601:

Nickel, zinc, cadmium, lead, total chromium, and copper - See Part II, Item O.

Dissolved hexavalent chromium and total cyanide - See Part II, Item Q.

Mercury - See Part II, Items L and Q.

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Part I, B. - UPSTREAM MONITORING REQUIREMENTS

Upstream Monitoring. During the period beginning on the effective date of this permit and lasting until 32 months from the effective date, the permittee shall monitor the receiving stream, upstream of the point of discharge at Station Number 2PD00031801, and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of sampling.

Table - Upstream Monitoring - 801 - Interim

Effluent Characteristic Parameter	Discharge Limitations					Monitoring Requirements			
	Concentration	Specified Units	Weekly	Monthly	Daily	Loading* kg/day	Measuring Frequency	Sampling Type	Monitoring Months
10610 - Water Temperature - C	-	-	-	-	-	-	1/Month	Grab	All
10660 - Dissolved Oxygen - mg/l	-	-	-	-	-	-	1/Month	Grab	All
10660 - pH - S.U.	-	-	-	-	-	-	1/Month	Grab	All
10610 - Nitrogen, Ammonia (NH3) - mg/l	-	-	-	-	-	-	1/Month	Grab	All
31516 - Fecal Coliform - #/100 ml	-	-	-	-	-	-	1/Month	Grab	Summer
61432 - 48-Hr. Acute Toxicity Caerodapnia dubia - % Affected	-	-	-	-	-	-	2/Year	Grab	Semi-annual - 5
61435 - 96-Hr. Acute Toxicity/Pimephales proseila - % Affected	-	-	-	-	-	-	2/Year	Grab	Semi-annual - 5
61438 - 7-Day Chronic Toxicity Caerodapnia dubia - % Affected	-	-	-	-	-	-	2/Year	Grab	Semi-annual - 5
61431 - 7-Day Chronic Toxicity Pimephales promelas - % Affected	-	-	-	-	-	-	2/Year	Grab	Semi-annual - 5

NOTES for Station Number 2PD00031801:

Whole effluent toxicity - See Part II, Item U.

Semi-annual-5 - May and November.

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Part I, B. - UPSTREAM MONITORING REQUIREMENTS

2PD00031\*ND

6. Upstream Monitoring. During the period beginning 32 months from the effective date of this permit and lasting until the expiration date, the permittee shall monitor the receiving stream, upstream of the point of discharge at Station Number 2PD00031801, and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of sampling.

Table - Upstream Monitoring - 801 - Final

Effluent Characteristic Parameter	Discharge Limitations				Monitoring Requirements					
	Concentration	Specified Units	Weekly	Monthly	Daily	Weekly	Monthly	Measuring Frequency	Sampling Type	Monitoring Months
8010 - Water Temperature - C	-	-	-	-	-	-	-	1/Month	Grab	All
8000 - Dissolved Oxygen - mg/l	-	-	-	-	-	-	-	1/Month	Grab	All
80400 - pH - S.U.	-	-	-	-	-	-	-	1/Month	Grab	All
80610 - Nitrogen, Ammonia (NH3) - mg/l	-	-	-	-	-	-	-	1/Month	Grab	All
80616 - Fecal Coliform - #/100 ml	-	-	-	-	-	-	-	1/Month	Grab	Summer

## Part I, C - Schedule of Compliance

### A. Compliance Schedule for Mercury Variance

1. The permittee shall use EPA Method 1631 to comply with the mercury monitoring requirements of this permit. The method detection level for Method 1631 is 0.2 ng/l. The quantification level is 0.5 ng/l. Because the quantification level for Method 1631 is lower than the mercury effluent limits, it is possible to directly evaluate compliance with the limits.

2. During the period beginning on the effective of this permit and lasting until this permit is modified or renewed, an interim quantification level (QL) of 1.0 ug/l (1000 ng/l) shall apply to analytical results reported for mercury. Any analytical result reported less than the interim QL shall be considered to be in compliance with that limit.

#### REPORTING:

All analytical results, even those below the QL shall be reported. Analytical results are to be reported as follows:

a. Results above the QL: Report the analytical result for mercury.

b. Results above the MDL, but below the QL: Report the analytical result, even though it is below the QL.

c. Results below the MDL: Analytical results below the method detection limit shall be reported as "below detection" using the reporting code "AA".

3. Based on an evaluation of mercury data for outfall 2PD00031001 collected using Method 1631, the permittee shall submit one of the following to Ohio EPA not later than 36 months from the effective date of this permit (Event Code 88899):

a. A letter stating that it intends to comply with the water quality based effluent limits for mercury included in the NPDES permit. In this case the permit will be modified to delete the interim quantification level; or

b. If the permittee believes that it will be able to take actions leading to compliance with the water quality based effluent limits for mercury included in this NPDES permit, it may submit a request to modify the NPDES permit to include a schedule of compliance and an interim effluent limit for mercury; or

c. If the permittee determines that compliance with the water quality based effluent limits for mercury included in this permit is not possible without the construction of expensive end-of-pipe controls, a variance from the mercury water quality standards is available under section D(10) of rule 3745-33-07. If the permittee determines it is eligible, it may submit an application for coverage under this mercury variance. Section D(10)(a) of rule 3745-33-07 includes information on eligibility for coverage and lists the information that must be included in the application; or

d. If the permittee determines that compliance with the water quality based effluent limits for mercury included in this permit is not possible, and it is not eligible for coverage under the mercury variance available at section D(10) of rule 3745-33-07, it may submit an application for an individual variance from water quality standards. Section (D)(1-3) of rule 3745-33-07 provides information on the applicability and conditions of an individual variance. Section (D)(4) of the rule lists the information that must be included in the application.

This permit may be modified to include either interim limits and a schedule of compliance or new limits and conditions if a variance is issued.

A guidance document explaining both the mercury variance and the individual variance is available at <http://www.epa.state.oh.us/dsw/guidance/guidance.html> (Permit Guidance 10). Copies are available upon request from Ohio EPA, Central Office, Division of Surface Water, Permits Section.

Letters or applications submitted under this item of the Schedule of Compliance shall be sent to the Division of Surface Water at the appropriate Ohio EPA District Office.

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## B. Combined Sewer System Long-Term Control Plan Schedule

The permittee shall develop a Combined Sewer System Long-Term Control Plan (LTCP). The purpose of the plan is to minimize and eliminate discharges from the collection system and insure that discharges from combined sewer overflows shall not cause or contribute to violations of water quality standards or impairment of designated uses. If the contents of the long-term control plan are subject to review under 3745-1-05 (antidegradation), the plan will be public noticed as required in Section C of 3745-1-05. The plan shall address, as a minimum, the following:

### 1. Public Participation

The permittee shall prepare a public participation plan that outlines how the permittee will ensure participation of the public throughout the long-term control plan development process.

## 2. Combined Sewer System Characterization, Monitoring and Modeling

The permittee shall characterize its collection system and overflows using the tools of monitoring and modeling. A monitoring program will be proposed that provides adequate data to characterize and model the collection system and overflows; supports development and implementation of the minimum control measures; supports development and implementation of a long-term control plan; and allows the effectiveness of control measures to be evaluated.

## 3. Identification of Sensitive Waters

The permittee shall identify CSO discharges to State Resource Waters (OAC 3745-1-05), Bathing Waters [OAC 3745-1-07(B)(4)], waters with endangered species or their habitats, and all surface waters within 500 yards of an existing public water supply intake and designate these discharges as the highest priority for elimination, relocation or treatment. Overflows to these waters shall be eliminated or relocated whenever physically and economically achievable, except when this would cause unacceptable water quality impacts elsewhere in the system. If elimination or relocation is not possible, then treatment must be provided that will result in attainment of water quality standards and designated uses.

## 4. Identification of Potential Human Health Impacts and Public Notification

The permittee shall identify CSO discharges to waters, including small, accessible urban streams, where there is a high probability for contact recreation, and develop controls to ensure that these waters attain the applicable water quality standards for bacteria. The potential for human health impacts, public input on the recreational value of the streams, and financial considerations should be used to prioritize controls for these streams.

The permittee shall develop and implement a significant notification program that informs the public of the possible health and environmental impacts associated with CSOs, and advises against contact recreation when elevated bacteria levels may endanger public health.

The permittee should contact Ohio EPA to discuss water quality standard revisions they believe would be appropriate based on community recreational use evaluations.

## 5. Evaluation of Control Alternatives

The LTCP shall include a systemwide analysis of both the collection system and treatment plant. The plan shall evaluate specific control technologies/projects designed to eliminate and minimize overflow events from the collection system. The evaluation of each alternative shall include:

- costs;
- benefits such as reduction in overflow events, volume, and pollutant load;
- impact on user rates;
- affordability analysis; and
- construction and implementation schedules.

In developing this analysis, the permittee shall consult the following U.S. EPA guidance documents:

- "Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development";
- "Guidance: Coordinating Combined Sewer Overflow (CSO) Long-Term Planning with Water Quality Standards Reviews"; and
- "Combined Sewer Overflows Guidance for Long-Term Control Plan."

The LTCP must include:

- a. An evaluation of control measures that would result in complete elimination of overflows as well as alternatives that would minimize overflows to four overflow events per year or less. Alternative levels of control based on number of overflow events or percent capture may also be evaluated.

**b. Evaluation of control measures to convey additional flow to the treatment plant:**

- (i) for full treatment, as well as
- (ii) to route peak flows around biological treatment at the treatment plant to provide physical/chemical treatment and/or storage prior to discharge.

**c. The permittee shall identify combined sewer areas and consider ways to reduce storm water flow into combined sewers. Steps to consider include: diverting storm water away from the combined system (e.g. by constructing retention basins; removing inflow, such as roof drains); using catch basin flow restriction.**

**The permittee shall identify areas served by existing separate sanitary sewers and evaluate steps necessary to provide full treatment to these flows and to eliminate the discharge of separately sewered areas into the combined sewer area, especially areas tributary to an overflow point or plant bypass. The evaluation shall consider at a minimum using express sewers to route sanitary flows around combined sewer areas to the treatment plant for full treatment.**

**d. Selection of an array of control measures that maintains, at a minimum, four overflow events per year or less and attainment of water quality standards for the collection system and treatment plant and that meets the criteria set forth above.**

**6. Sanitary Sewer Extension Plan**

**The permittee shall complete an evaluation of sanitary sewer extensions that are tributary to sewer system overflows or to any bypasses located at the wastewater treatment plant. The plan shall provide the following information based on an analysis of the current collection system as well as the selected control alternative required by Item 5.d above:**

- a. Identification of specific geographic areas tributary to combined sewer overflows or bypasses located at the wastewater treatment plant to which the permittee plans to extend sanitary sewer service;**
- b. Determination of the dry weather flow capacities of the sewers and interceptors that will receive the increased flow;**
- c. Determination of the existing dry weather flow in the sewers and interceptors that will receive the increased flow;**
- d. Definition of how much additional dry weather, sanitary flow is planned in the sewers and interceptors;**
- e. Prediction of increases in frequency, duration, volume and pollutant loads from wet weather combined sewer overflows that will result from increasing the dry weather flow in the sewers and interceptors;**

f. If there is a bypass at the treatment plant, prediction of increases in frequency, duration, volume and pollutant loads from bypasses that will result from the increased base dry weather flow;

g. Prediction of water quality impacts to the receiving stream(s) that will result from increased combined sewer overflows and treatment plant bypasses; and

h. Evaluation of alternatives and proposal of control measures that would eliminate increases in combined sewer overflows, treatment plant bypasses, and adverse water quality impacts.

i. When submitted, the plan shall be accompanied by a completed antidegradation addendum. To meet the information submittal requirements of antidegradation, the plan shall include data and information that allow for the examination of control alternatives, a review of the social and economic issues related to the plan, and fulfill other requirements of 3745-1-05(B)(3)(a) - (h). If implementation of the plan results in site-specific lowering of water quality, the director shall consider OAC 3745-1-05(C)(5)(a) - (m) when making a determination regarding the plan.

#### 7. Schedule and Interim Deliverables

The following reports shall be developed in accordance with the requirements specified in Sections B.1 through B.6 and two copies (unless otherwise specified) shall be submitted to the Ohio EPA Northwest District Office by the dates specified below:

a. The Public Participation Plan as required by Item B.1 shall be submitted not later than 12 months from the effective date of this permit. (Event Code 21599)

b. The Combined Sewer System Characterization, Monitoring and Modeling report and Identification of Sensitive Waters as required by Items B.2 and B.3 shall be submitted not later than 24 months from the effective date of this permit. (Event Code 11099)

c. The Identification of Potential Human Health Impacts and a report on the development of appropriate controls as required by Item B.4 shall be submitted not later than 30 months from the effective date of this permit. The Public Notification program required by Item B.4 shall be submitted not later than 30 months from the effective date of this permit. (Event Code 11099)

d. The Public Notification program required by Item B.4 shall be implemented not later than 36 months from the effective date of this permit. The permittee shall notify the Ohio EPA Northwest District Office within 7 days of beginning implementation of the program. (Event Code 88899)

e. The Evaluation of Control Alternatives report, including implementation schedules, as required by Item B.5 shall be submitted not later than 42 months from the effective date of this permit. (Event Code 11099)

f. Five (5) copies of the Sanitary Sewer Extensions Plan required by Item B.6 shall be submitted not later than 48 months from the effective date of this permit. (Event Code 21599)

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C. Combined Sewer System Operational Plan

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1. Within 54 months from the effective date of this permit, the permittee shall submit to the District Office for approval two copies of a revised Combined Sewer System Operational Plan that addresses operation and maintenance of the components of its combined sewer system. The revised plan shall maximize the removal of pollutants during and after each precipitation event using all available facilities within the wastewater collection and treatment system. (Event Code 11099)

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D. Municipal Pretreatment Schedule

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1. The permittee shall evaluate the adequacy of local industrial user limitations to attain compliance with final table limits. Technical justification for revising local industrial user limitations to attain compliance with final table limits, along with a pretreatment program modification request, or technical justification for retaining existing local industrial user limitations shall be submitted to Ohio EPA, Central Office Pretreatment Unit, in duplicate, as soon as possible, but no later than 6 months from the effective date of this permit. (Event Code 52599)

Technical justification is required for copper. Technical justification is also required for arsenic, cadmium, total chromium, dissolved hexavalent chromium, cyanide, lead, molybdenum, nickel, selenium, silver, and zinc unless screening of wastewater and sludge indicate these pollutants are not present in significant amounts. Furthermore, technical justification is required for any other pollutants where a local limit may be necessary to protect against pass through and interference.

To demonstrate technical justification for new local industrial user limits or justification for retaining existing limits, the following information must be submitted to Ohio EPA:

- a. Domestic/background and industrial pollutant contributions
- b. Treatment plant removal efficiencies
- c. A comparison of maximum allowable headworks loadings based on all applicable criteria. Criteria may include sludge disposal, NPDES permit limits, and interference with biological processes such as activated sludge, sludge digestion, nitrification, etc.

- d. If revised industrial user discharge limits are proposed, the method of allocating available pollutant loads to industrial users
- e. Supporting data, assumptions, and methodologies used in establishing the information a through d above.
2. If revisions to local industrial user limitations are determined to be necessary, no later than 4 months after the date of Ohio EPA approval of the pretreatment program modification request to revise local industrial user limitations, the permittee shall incorporate revised local industrial user limitations in all industrial user control documents.

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**E. Municipal Pretreatment Schedule - Mercury**

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1. The permittee shall evaluate the adequacy of local industrial user limitations for mercury. Technical justification for revising local industrial user limitations, along with a pretreatment program modification request, or technical justification for retaining existing local industrial user limitations shall be submitted to Ohio EPA. If screening of wastewater and sludge indicates that mercury is not present in significant amounts, the permittee may submit a technical justification that local industrial user limits for mercury are not currently necessary. The technical justification shall be submitted to the Central Office Pretreatment Unit, in duplicate, as soon as possible, but not later than 36 months from the effective date of this permit (Event Code 52599).

To demonstrate technical justification for new numeric local limits or justification for retaining existing numeric limits, the following information must be submitted to Ohio EPA:

- a. Domestic/background and industrial pollutant contributions. When representative sampling of the collection system or industrial pollutant contributors conducted using EPA Method 245.1 or 245.2 shows mercury concentrations that are below detection, EPA Method 1631 shall be used to quantify domestic/background and industrial pollutant contributions of mercury.
- b. Treatment plant removal efficiencies. When representative sampling of the influent or effluent conducted using EPA Method 245.1 or 245.2 shows mercury concentrations that are below detection, EPA Method 1631 shall be used to quantify influent and effluent mercury concentrations.
- c. A comparison of maximum allowable headworks loadings based on all applicable criteria. Criteria may include sludge disposal, NPDES permit limits, and interference with biological processes such as activated sludge, sludge digestion, nitrification, etc.

d. If revised industrial user discharge limits are proposed, the method of allocating available pollutant loads to industrial users. When appropriate, revised industrial user discharge limits may include narrative local limits requiring industrial users to develop and implement best management practices for mercury. These narrative local limits may be used either alone or as a supplement to a numeric limit.

e. Supporting data, assumptions, and methodologies used in establishing the information a through d above.

To demonstrate technical justification that local limits for mercury are not currently necessary, the permittee shall submit effluent and sludge data showing that mercury is not present in significant amounts. The data shall be accompanied by an evaluation supporting the determination that local limits for mercury are not currently necessary.

2. If revisions to local industrial user limitations are determined to be necessary, no later than 4 months after the date of Ohio EPA approval of the pretreatment program modification request to revise local industrial user limitations, the permittee shall incorporate revised local industrial user limitations in all industrial user control documents.

**Part II, Other Requirements**

A. The wastewater treatment works must be under supervision of a Class III State certified operator as required by rule 3745-7-02 of the Ohio Administrative Code.

B. Description of the location of the required sampling stations are as follows:

Sampling Station	Description of Location
- 2PD00031001	Final effluent (Lat: 41N 10' 12"; Long: 83W 25' 48")
- 2PD00031009	Secondary treatment bypass from equalization basin
- 2PD00031586	Sludge to landfill
- 2PD00031601	Raw influent
- 2PD00031801	Upstream
- 2PD00031901	Downstream

C. All parameters, except flow, need not be monitored on days when the plant is not normally staffed (Saturdays, Sundays, and Holidays). On those days, report "AN" on the monthly report form.

D. The permittee is authorized to discharge from the following overflows only during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system. See Part II, Item E for monitoring and reporting requirements. Also see Part III, Item 11.

Station Number	Description	Receiving Stream
- 2PD00031004	72" Thomas St. (41N 10' 40" 83W 25' 35")	E.Branch Portage River
- 2PD00031005	60" Berkshire Dr. (41N 10' 02" 83W 25' 30")	E.Branch Portage River
- 2PD00031006	60" Parkway Dr. (41N 08' 52" 83W 25' 29")	E.Branch Portage River
- 2PD00031007	54" Vine St. (41N 09' 48" 83W 25' 49")	E.Branch Portage River
- 2PD00031008	68" X106" Circle Dr (41N 10' 04" 83W 23' 25")	Caples-Flack Ditch

E. The permittee shall monitor the system overflows at stations 2PD00031004 through 2PD00031008 and report to the Ohio EPA in accordance with the following table:

CHARACTERISTIC		MONITORING REQUIREMENTS		
Reporting Code	Units	Parameter	Measurement Frequency	Sample Type
. 00530	mg/l	Suspended Solids	1/Month	Grab
. 50050	Million Gallons	Volume	When discharging	Daily Est.
. 80082	mg/l	CBOD5	1/Month	Grab
. 80998	Number/Month	Occurrences	When discharging	Estimate
. 80999	Hours	Duration	When discharging	Daily Est.

The permittee shall sample the five (5) stations during each storm event. Samples should be collected during the first 30 minutes of discharge.

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

Monitoring data shall be submitted for each month when discharge occurs. When discharge occurs, the monthly monitoring report shall be attached to the normal monthly report form (EPA-4500).

F. The entire wastewater treatment system including the collection system shall be operated and maintained so that the total loading of pollutants discharged during wet weather is minimized. The permittee shall implement the nine minimum controls for CSOs in accordance with the combined sewer system operational plan submitted to Ohio EPA in May 1996. The permittee shall keep records to document the implementation of the plan. The permittee shall utilize the following technologies:

- 1) provide proper operation and maintenance for the collection system and the combined sewer overflow points;
- 2) provide the maximum use of the collection system for storage of wet weather flow prior to allowing overflows;
- 3) review and modify the pretreatment program to minimize the impact of nondomestic discharges from combined sewer overflows;
- 4) maximize the capabilities of the POTW to treat wet weather flows, and maximize the wet weather flow to the wastewater treatment plant within the limits of the plant's capabilities;
- 5) prohibit dry weather overflows;
- 6) control solid and floatable materials in the combined sewer overflow discharge;
- 7) conduct required inspection, monitoring and reporting of CSOs;
- 8) implement pollution prevention programs that focus on reducing the level of contaminants in CSOs; and
- 9) implement a public notification program for areas affected by CSOs, especially beaches and recreation areas.

G. Composite samples shall be comprised of a series of grab samples collected over a 24-hour period and proportionate in volume to the sewage flow rate at the time of sampling. Such samples shall be collected at such times and locations, and in such a fashion, as to be representative of the facility's overall performance.

H. Grab samples shall be collected at such times and locations, and in such fashion, as to be representative of the facility's performance.

I. Multiple grab samples shall be comprised of at least three grab samples collected at intervals of at least three hours during the period that the plant is staffed on each day for sampling. Samples shall be collected at such times and locations, and in such fashion, as to be representative of the facility's overall performance. The critical value shall be reported.

J. Effluent disinfection is not directly required, however, the entity is required to meet all applicable discharge permit limits. If disinfection facilities exist, they shall be maintained in an operable condition. Any design of wastewater treatment facilities should provide for the capability to install disinfection if required at a future time. Disinfection may be required if future bacteriological studies or emergency conditions indicate the need.

K. The treatment works must obtain at least 85 percent removal of carbonaceous biochemical oxygen demand (five-day) and suspended solids (see Part III, Item 1).

L. The permittee shall use EPA Method 1631 promulgated as an approved method for mercury analysis under 40 CFR 136, to comply with the mercury monitoring requirements of this permit. The method detection level (MDL) for Method 1631 is 0.2 ng/l. The quantification level for Method 1631 is 0.5 ng/l.

M. POTWs that accept hazardous wastes by truck, rail, or dedicated pipeline are considered to be hazardous waste treatment, storage, and disposal facilities (TSDFs) and are subject to regulation under the Resource Conservation and Recovery Act (RCRA). Under the "permit-by-rule" regulation found at 40 CFR 270.60(c), a POTW must

- . 1) comply with all conditions of its NPDES permit,
- . 2) obtain a RCRA ID number and comply with certain manifest and reporting requirements under RCRA,
- . 3) satisfy corrective action requirements, and
- . 4) meet all federal, state, and local pretreatment requirements.

N. Final permit limitations based on preliminary or approved waste load allocations are subject to change based on modifications to or finalization of the allocation or report or changes to Water Quality Standards. Monitoring requirements and/or special conditions of this permit are subject to change based on regulatory or policy changes.

O. Sampling for these parameters at station 2PD00031001, 2PD00031601, and 2PD00031901 shall occur the same day.

P. Sampling at station 2PD00031001 for these parameters shall occur one detention time (the time it takes for a volume of water to travel through the treatment plant) after sampling at station 2PD00031601 for the same parameters on the same day.

Q. Sampling at station 2PD00031601 for these parameters shall occur one detention time (the time it takes for a volume of water to travel through the treatment plant) prior to sampling at station 2PD00031001 for the same parameters on the same day.

R. Not later than January 31 of each calendar year, the permittee shall submit two (2) copies of a report summarizing the sludge disposal and/or reuse activities of the facility during the previous year. One copy of the report shall be sent to the Ohio EPA, Division of Surface Water, Central Office, and one copy of the report shall be sent to the appropriate Ohio EPA District Office. This report shall address:

- 1) Amount of sludge disposed of/reused in dry tons.
- 2) Method(s) of disposal/reuse.
- 3) Summary of all analyses made on the sludge, including any priority pollutant scans that may have been performed. (If a priority pollutant scan has been conducted as a part of the pretreatment program, the most recent analysis should be submitted.)
- 4) Problems encountered including any complaints received. The cause or reason for the problem and corrective actions taken to solve the problem should also be included. Any incidents of interference with the method of sludge disposal shall be identified, along with the cause of interference (i.e., excessive metals concentration, contaminated sludge, etc.) and the corrective actions taken.

S. A composite sample of sewage sludge collected at Station 581 shall be monitored for dioxin in sewage sludge, as the term dioxin is defined in rule 3745-40-01 of the Ohio Administrative Code, and the results reported to the Ohio EPA as per rule 3745-40-06 of the Ohio Administrative Code.

T. It is understood by Ohio EPA that at the time permit 2PD00031\*ND becomes effective, an analytical method is not approved under 40 CFR 136 to comply with the free cyanide monitoring requirements included in the permit. The permittee shall utilize method 4500-CN I in the 17th edition of Standard Methods until U.S. EPA promulgates a method for analyzing free cyanide under 40 CFR 136.

## T. Pretreatment Program Requirements

The permittee's approved pretreatment program and subsequent modifications listed below, including conditions of such approvals, shall be an enforceable term and condition of this permit.

Description of Modification	Date of Approval
Monitoring Frequencies	09/18/91
Local Limits	10/20/92
Enforcement Management System	07/02/92
Permits	09/18/91, 07/02/92
Ordinance	04/30/90, 08/13/91
Significant Industrial User List	01/29/91

To ensure that the approved program is implemented in accordance with 40 CFR 403 and Chapter 6111 of the Ohio Revised Code, the permittee shall comply with the following conditions:

### 1) Legal Authority

The permittee shall adopt and maintain legal authority which enables it to fully implement and enforce all aspects of its approved pretreatment program including the identification and characterization of industrial sources, issuance of control documents, compliance monitoring and reporting, and enforcement.

### 2. Industrial User Inventory

The permittee shall identify all industrial users subject to pretreatment standards and requirements and characterize the nature and volume of pollutants in their wastewater. Dischargers determined to be Significant Industrial Users according to OAC 3745-3-01(CC) must be notified of applicable pretreatment standards and requirements within 30 days of making such a determination. This inventory shall be updated at a frequency to ensure proper identification and characterization of industrial users.

### 3. Local Limits

The permittee shall develop and enforce technically based local limits to prevent the introduction of pollutants into the POTW which will interfere with the operation of the POTW, pass through the treatment works, be incompatible with the treatment works, or limit wastewater or sludge use options.

The permittee shall use the following water quality based values when evaluating local limits for the following pollutants, which do not have discharge limitations:

- . Antimony 191 ug/l
- . Arsenic 102 ug/l
- . Bis(2-ethylhexyl)phthalate 8.4 ug/l
- . Cadmium 5.4 ug/l
- . Chromium, total 102 ug/l
- . Chromium, dissolved hexavalent 11 ug/l
- . Cyanide 5.2 ug/l
- . Lead 29 ug/l
- . Molybdenum 110 ug/l
- . Nickel 120 ug/l
- . Selenium 5 ug/l
- . Silver 1.3 ug/l
- . Strontium 772 ug/l
- . Total dissolved solids 1503 mg/l
- . Zinc 221 ug/l

For the purpose of periodically reevaluating local limits, the permittee shall implement and maintain a sampling program to characterize pollutant contribution to the POTW from industrial and residential sources and to determine pollutant removal rates through the POTW. The permittee shall continue to review and develop local limits as necessary.

. 4. Control Mechanisms

The permittee shall issue individual control mechanisms to all industries determined to be Significant Industrial Users as defined in OAC 3745-3-01(CC). Control mechanisms must meet at least the minimum requirements of OAC-3745-3-03(C)(1)(c).

. 5. Industrial Compliance Monitoring

The permittee shall sample and inspect industrial users in accordance with the approved program. However, monitoring frequencies must be adequate to determine the compliance status of industrial users independent of information submitted by such users. Sample collection, preservation and analysis must be performed in accordance with procedures in 40 CFR 136 and with sufficient care to produce evidence admissible in judicial enforcement proceedings.

The permittee shall also require, receive, and review self-monitoring and other industrial user reports when necessary to determine compliance with pretreatment standards and requirements.

. 6. POTW Priority Pollutant Monitoring

The permittee shall annually monitor priority pollutants, as defined by U.S. EPA, in the POTW's influent, effluent and sludge. Sample collection, preservation, and analysis shall be performed using U.S. EPA approved methods.

a. A sample of the influent and the effluent shall be collected when industrial discharges are occurring at normal to maximum levels. Both samples shall be collected on the same day or, alternately, the effluent sample may be collected following the influent sample by approximately the retention time of the POTW. The samples shall be 24 hour composites except for volatile organics and cyanide which shall be collected by appropriate grab sampling techniques. Sampling of the influent shall be done prior to any recycle streams and sampling of the effluent shall be after disinfection.

Another sample shall be representative of sludge removed to final disposal. A minimum of one grab sample shall be taken during actual sludge removal and disposal unless the POTW uses more than one disposal option. If multiple disposal options are used, the POTW shall collect a composite of grab samples from all disposal practices which are proportional to the annual flows to each type of disposal.

b. A reasonable attempt shall be made to identify and quantify additional constituents (excluding priority pollutants and unsubstituted aliphatic compounds) at each sample location. Identification of additional peaks more than ten times higher than the adjacent background noise on the total ion plots (reconstructed gas chromatograms) shall be attempted through the use of U.S. EPA/NIH computerized library of mass spectra, with visual confirmation by an experienced analyst. Quantification may be based on an order of magnitude estimate compared with an internal standard.

The results of these samples must be submitted on Ohio EPA Form 4221 with the permittee's annual pretreatment report. Samples may be collected at any time during the 12 months preceding the due date of the annual report and may be used to fulfill other NPDES monitoring requirements where applicable.

#### 7. Enforcement

The permittee shall investigate all instances of noncompliance with pretreatment standards and requirements and take timely, appropriate, and effective enforcement action to resolve the noncompliance in accordance with the permittee's approved enforcement response plan.

On or prior to March 15th of each year, the permittee shall publish, in the largest daily newspaper within the permittee's service area, a list of industrial users which, during the previous 12 months, have been in Significant Noncompliance [OAC 3745-3-03(C)(2)(g)] with applicable pretreatment standards or requirements.

**8. Reporting**

All reports required under this section shall be submitted to the following address in duplicate:

Ohio Environmental Protection Agency  
Division of Surface Water  
Pretreatment Unit  
P.O. Box 1049  
Columbus, OH 43266-0149

**a. Quarterly Industrial User Violation Report**

On or prior to the 15th day of February, May, August, and November, the permittee shall report the industrial users that are in violation of applicable pretreatment standards during the previous quarter. The report shall be prepared in accordance with guidance provided by Ohio EPA and shall include a description of all industrial user violations and corrective actions taken to resolve the violations.

**b. Annual Pretreatment Report**

On or prior to March 15th of each year, the permittee shall submit an annual report on the effectiveness of the pretreatment program, prepared in accordance with guidance provided by Ohio EPA. The report shall include, but not be limited to: a discussion of program effectiveness; and industrial user inventory; a description of the permittee's monitoring program; a description of any pass through or interference incidents; a copy of the annual publication of industries in Significant Noncompliance; and, priority pollutant monitoring results.

**9. Record Keeping**

All records of pretreatment activities including, but not limited to, industrial inventory data, monitoring results, enforcement actions, and reports submitted by industrial users must be maintained for a minimum of three (3) years. This period of retention shall be extended during the course of any unresolved litigation. Records must be made available to Ohio EPA and U.S. EPA upon request.

**10. Program Modifications**

Any proposed modifications of the approved pretreatment program must be submitted to the Ohio EPA for review, on forms available from Ohio EPA and consistent with guidance provided by Ohio EPA. If the modification is deemed to be substantial, prior approval must be obtained before implementation; otherwise, the modification is considered to be effective 45 days after the date of application. Substantial program modifications include, among other things, changes to the POTW's legal authority, control mechanism, local limits, confidentiality procedures, or monitoring frequencies.

## U. Biomonitoring Program Requirements

As soon as possible, but not later 3 months after the effective date of this permit, the entity shall initiate an effluent biomonitoring program to determine the toxicity of the effluent from outfall 2PD00031001.

### General Requirements

All toxicity testing conducted as required by this permit shall be done in accordance with Reporting and Testing Guidance for Biomonitoring Required by the Ohio Environmental Protection Agency (hereinafter, the "biomonitoring guidance"), Ohio EPA, July 1998 (or current revision). The Standard Operating Procedures (SOP) or verification of SOP submittal, as described in Section 1.B. of the biomonitoring guidance, shall be submitted no later than three months after the effective date of this permit. If the laboratory performing the testing has modified its protocols, a new SOP is required.

### Testing Requirements

#### 1. Chronic Bioassays

Beginning not later than 3 months from the effective date of this permit and lasting until 32 months from the effective date, the permittee shall conduct semi-annual chronic toxicity tests using *Ceriodaphnia dubia* and fathead minnows (*Pimephales promelas*) on effluent samples from outfall 2PD00031001. These tests shall be conducted as specified in Section 3 of the biomonitoring guidance.

#### 2. Acute Bioassays

Acute endpoints, as described in Section 2.H. of the biomonitoring guidance, shall be derived from the chronic test results.

#### 3. Testing of Ambient Water

In conjunction with the chronic toxicity tests, upstream control water shall be collected at a point outside the zone of effluent and receiving water interaction at station 2PD00031801. Testing of ambient waters shall be done in accordance with Sections 2 and 3 of the biomonitoring guidance.

#### 4. Data Review

##### a. Reporting

Following completion of each semi-annual bioassay requirement, the permittee shall report results of the tests in accordance with Sections 2.H.1., 2.H.2.a., 3.H.1., and 3.H.2.a. of the biomonitoring guidance. Based on Ohio EPA's evaluation of the results, this permit may be modified to require additional biomonitoring, or require a toxicity reduction evaluation.

b. Definitions

TUa = Acute Toxicity Units = 100/LC50

TUc = Chronic Toxicity Units = 100/IC25

This equation applies outside the mixing zone for warmwater, modified warmwater, exceptional warmwater, coldwater, and seasonal salmonid use designations except when the following equation is more restrictive (*Ceriodaphnia dubia* only):

TUc = Chronic Toxic Units = 100/square root of (NOEC x LOEC)

c. Trigger to initiate a toxicity reduction evaluation (TRE)

Based upon evaluation of the data required under 4.a., above, Ohio EPA personnel will determine if a TRE will be required of the permittee. A decision to require a TRE will be based upon professional judgment and the following decision criteria:

- 1) two or more tests exceed the acute allowable effluent toxicity (AET) of 0.3 TUa, which is equivalent to 30 percent affected organisms in 100 percent effluent, in the outfall 2PD00031001 effluent,
- 2) two or more tests exceed the chronic AET of 1.0 TUc in the outfall 2PD00031001 effluent,
- 3) a review of the test procedures for adequacy,
- 4) evaluation of the normality of process and treatment plant operations at the time of sampling,
- 5) evaluation of ambient toxicity data, and
- 6) evaluation of any available biosurvey data.

The permittee shall receive written notification from the Ohio EPA if a TRE is required. Notification to initiate a TRE will serve as the trigger to require the imposition of final effluent limits of 1.0 TUa and 1.0 TUc. If a TRE is not required based upon the above criteria, Ohio EPA will review the biomonitoring results as in 4.a. above.

### PART III - GENERAL CONDITIONS

#### 1. DEFINITIONS

"Daily load" is the total discharge by weight during any calendar day. If only one sample is taken during a day, the weight of pollutant discharge calculated from it is the daily load.

"Daily concentration" means the arithmetic average of all the determinations of concentration made during the day. If only one sample is taken during the day, its concentration is the daily concentration. Coliform bacteria limitations compliance shall be determined using the geometric mean.

"Weekly load" is the total discharge by weight during any 7-day period divided by the number of days in that 7-day period that the facility was in operation. If only one sample is taken in a 7-day period, the weight of pollutant discharge calculated from it is the 7-day load. If more than one sample is taken during the 7-day period, the 7-day load is calculated by determining the daily load for each day sampled, totaling the daily loads for the 7-day period, and dividing by the number of days sampled.

"Weekly concentration" means the arithmetic average of all the determinations of daily concentration limitation made during the 7-day period. If only one sample is taken during the 7-day period, its concentration is the 7-day concentration for that 7-day period. Coliform bacteria limitations compliance shall be determined using the geometric mean.

"Monthly load" is the total discharge by weight during all days in a calendar month divided by the number of days that the facility was in operation during that month. If only one sample is taken during the month the weight of pollutant discharge calculated from it is the monthly load. If more than one sample is taken during the month, the monthly load is calculated by determining the daily load for each day sampled, totaling the daily loads for the month and dividing by the number of days sampled.

"Monthly concentration" means the arithmetic average of all the determinations of daily concentration made during any calendar month. If only one sample is taken during the month, its concentration is the monthly concentration for that period. Coliform bacteria limitations compliance shall be determined using the geometric mean.

"85 percent removal" means the arithmetic mean of the values for effluent samples collected in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same times during the same period.

"Absolute Limitations" Compliance with limitations having descriptions of "shall not be less than," "not greater than," "shall not exceed," "minimum," or "maximum" shall be determined from any single value for effluent samples and/or measurements collected.

"Net concentration" shall mean the difference between the concentration of a given substance in a sample taken of the discharge and the concentration of the same substances in a sample taken at the intake which supplies water to the given process. For the purpose of this definition, samples that are taken to determine the net concentration shall always be 24-hour composite samples made up of at least six increments taken at regular intervals throughout the plant day.

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"Net load" shall mean the difference between the load of a given substance as calculated from a sample taken of the discharge and the load of the same substance in a sample taken at the intake which supplies water to given process. For purposes of this definition, samples that are taken to determine the net loading shall always be 24-hour composite samples made up of at least six increments taken at regular intervals throughout the plant day.

"MGD" means million gallons per day.

"mg/l" means milligrams per liter.

"ug/l" means micrograms per liter.

"ng/l" means nanograms per liter.

"S.U." means standard pH unit.

"kg/day" means kilograms per day.

"Reporting Code" is a five digit number used by the Ohio EPA in processing reported data. The reporting code does not imply the type of analysis used nor the sampling techniques employed.

"Quarterly (1/Quarter) sampling frequency" means the sampling shall be done in the months of March, June, August, and December, unless specifically identified otherwise in the Effluent Limitations and Monitoring Requirements table.

"Yearly (1/Year) sampling frequency" means the sampling shall be done in the month of September, unless specifically identified otherwise in the effluent limitations and monitoring requirements table.

"Semi-annual (2/Year) sampling frequency" means the sampling shall be done during the months of June and December, unless specifically identified otherwise.

"Winter" shall be considered to be the period from November 1 through April 30.

"Bypass" means the intentional diversion of waste streams from any portion of the treatment facility.

"Summer" shall be considered to be the period from May 1 through October 31.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

## 2. GENERAL EFFLUENT LIMITATIONS

The effluent shall, at all times, be free of substances:

- A. In amounts that will settle to form putrescent, or otherwise objectionable, sludge deposits; or that will adversely affect aquatic life or water fowl;
- B. Of an oily, greasy, or surface-active nature, and of other floating debris, in amounts that will form noticeable accumulations of scum, foam or sheen;
- C. In amounts that will alter the natural color or odor of the receiving water to such degree as to create a nuisance;
- D. In amounts that either singly or in combination with other substances are toxic to human, animal, or aquatic life;
- E. In amounts that are conducive to the growth of aquatic weeds or algae to the extent that such growths become inimical to more desirable forms of aquatic life, or create conditions that are unsightly, or constitute a nuisance in any other fashion;
- F. In amounts that will impair designated instream or downstream water uses.

## 3. FACILITY OPERATION AND QUALITY CONTROL

All wastewater treatment works shall be operated in a manner consistent with the following:

- A. At all times, the permittee shall maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee necessary to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with conditions of the permit.
- B. The permittee shall effectively monitor the operation and efficiency of treatment and control facilities and the quantity and quality of the treated discharge.
- C. Maintenance of wastewater treatment works that results in degradation of effluent quality shall be scheduled during non-critical water quality periods and shall be carried out in a manner approved by Ohio EPA as specified in the Paragraph in the PART III entitled, "UNAUTHORIZED DISCHARGES".

## 4. REPORTING

- A. Monitoring data required by this permit may be submitted in hardcopy format on the Ohio EPA 4500 report form pre-printed by Ohio EPA or an approved facsimile. Ohio EPA 4500 report forms for each individual sampling station are to be received no later than the 15th day of the month following the month-of-interest. The original report form must be signed and mailed to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Surface Water  
Enforcement Section ES/MOR  
P.O. Box 1049  
Columbus, Ohio 43216-1049

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Monitoring data may also be submitted electronically using Ohio EPA developed SWIMware software. Data must be transmitted to Ohio EPA via electronic mail or the bulletin board system by the 20th day of the month following the month-of-interest. A Surface Water Information Management System (SWIMS) Memorandum of Agreement (MOA) must be signed by the responsible official and submitted to Ohio EPA to receive an authorized Personal Identification Number (PIN) prior to sending data electronically. A hardcopy of the Ohio EPA 4500 form must be generated via SWIMware, signed and maintained onsite for records retention purposes.

B. If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified below, the results of such monitoring shall be included in the calculation and reporting of the values required in the reports specified above.

C. Analyses of pollutants not required by this permit, except as noted in the preceding paragraph, shall not be reported on Ohio EPA report form (4500) but records shall be retained as specified in the paragraph entitled "RECORDS RETENTION".

#### 5. SAMPLING AND ANALYTICAL METHOD

Samples and measurements taken as required herein shall be representative of the volume and nature monitored flow. Test procedures for the analysis of pollutants shall conform to regulation 40 CFR 136, "Test Procedures For The Analysis of Pollutants" unless other test procedures have been specified in this permit. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and instrumentation at intervals to insure accuracy of measurements.

#### 6. RECORDING OF RESULTS

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

- A. The exact place and date of sampling; (time of sampling not required on EPA 4500)
- B. The person(s) who performed the sampling or measurements;
- C. The date the analyses were performed on those samples;
- D. The person(s) who performed the analyses;
- E. The analytical techniques or methods used; and
- F. The results of all analyses and measurements.

## 7. RECORDS RETENTION

The permittee shall retain all of the following records for the wastewater treatment works for a minimum of three years, including:

- A. All sampling and analytical records (including internal sampling data not reported);
- B. All original recordings for any continuous monitoring instrumentation;
- C. All instrumentation, calibration and maintenance records;
- D. All plant operation and maintenance records;
- E. All reports required by this permit; and
- F. Records of all data used to complete the application for this permit for a period of at least three years from the date of the sample, measurement, report, or application.

These periods will be extended during the course of any unresolved litigation, or when requested by the Regional Administrator or the Ohio EPA. The three year period for retention of records shall start from the date of sample, measurement, report, or application.

## 8. AVAILABILITY OF REPORTS

Except for data determined by the Ohio EPA to be entitled to confidential status, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the appropriate district offices of the Ohio EPA. Both the Clean Water Act and Section 6111.05 Ohio Revised Code state that effluent data and receiving water quality data shall not be considered confidential.

## 9. DUTY TO PROVIDE INFORMATION

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating the permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

## 10. RIGHT OF ENTRY

The permittee shall allow the Director or an authorized representative upon presentation of credentials and other documents as may be required by law to:

- A. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit.
- B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit.
- C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit.
- D. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

### 11. UNAUTHORIZED DISCHARGES

A. Bypassing or diverting of wastewater from the treatment works is prohibited unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime. This condition is not satisfied if adequate back up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
3. The permittee submitted notices as required under paragraph D. of this section,

B. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

C. The Director may approve an unanticipated bypass after considering its adverse effects, if the Director determines that it has met the three conditions listed in paragraph 11.A. of this section.

D. The permittee shall submit notice of an unanticipated bypass as required in section 12. A.

E. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded if that bypass is for essential maintenance to assure efficient operation.

## 12. NONCOMPLIANCE NOTIFICATION

A. The permittee shall by telephone report any of the following within twenty-four (24) hours of discovery at (toll free) 1-800-282-9378:

1. Any noncompliance which may endanger health or the environment;
2. Any unanticipated bypass which exceeds any effluent limitation in the permit; or
3. Any upset which exceeds any effluent limitation in the permit.
4. Any violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit.

B. For the telephone reports required by Part 12.A., the following information must be included:

1. The times at which the discharge occurred, and was discovered;
2. The approximate amount and the characteristics of the discharge;
3. The stream(s) affected by the discharge;
4. The circumstances which created the discharge;
5. The names and telephone numbers of the persons who have knowledge of these circumstances;
6. What remedial steps are being taken; and
7. The names and telephone numbers of the persons responsible for such remedial steps.

C. These telephone reports shall be confirmed in writing within five days of the discovery of the discharge and/or noncompliance and submitted to the appropriate Ohio EPA district office. The report shall include the following:

1. The limitation(s) which has been exceeded;
2. The extent of the exceedance(s);
3. The cause of the exceedance(s);
4. The period of the exceedance(s) including exact dates and times;
5. If uncorrected, the anticipated time the exceedance(s) is expected to continue, and
6. Steps being taken to reduce, eliminate, and/or prevent occurrence of the exceedance(s).

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**D. Compliance Schedule Events:**

If the permittee is unable to meet any date for achieving an event, as specified in the schedule of compliance, the permittee shall submit a written report to the appropriate district office of the Ohio EPA within 14 days of becoming aware of such situation. The report shall include the following:

1. The compliance event which has been or will be violated;
2. The cause of the violation;
3. The remedial action being taken;
4. The probable date by which compliance will occur; and
5. The probability of complying with subsequent and final events as scheduled.

E. The permittee shall report all instances of noncompliance not reported under paragraphs A, B, or C of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraphs B and C of this section.

F. Where the permittee becomes aware that it failed to submit any relevant application or submitted incorrect information in a permit application or in any report to the director, it shall promptly submit such facts or information.

**13. RESERVED**

**14. DUTY TO MITIGATE**

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

**15. AUTHORIZED DISCHARGES**

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than, or at a level in excess of, that authorized by this permit shall constitute a violation of the terms and conditions of this permit. Such violations may result in the imposition of civil and/or criminal penalties as provided for in Section 309 of the Act and Ohio Revised Code Sections 6111.09 and 6111.99.

**16. DISCHARGE CHANGES**

The following changes must be reported to the appropriate Ohio EPA district office as soon as practicable:

A. For all treatment works, any significant change in character of the discharge which the permittee knows or has reason to believe has occurred or will occur which would constitute cause for modification or revocation and reissuance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. Notification of permit changes or anticipated noncompliance does not stay any permit condition.

B. For publicly owned treatment works:

1. Any proposed plant modification, addition, and/or expansion that will change the capacity or efficiency of the plant;
2. The addition of any new significant industrial discharge; and
3. Changes in the quantity or quality of the wastes from existing tributary industrial discharges which will result in significant new or increased discharges of pollutants.

C. For non-publicly owned treatment works any proposed facility expansions, production increases, or process modifications, which will result in new, different, or increased discharges of pollutants.

Following this notice, modifications to the permit may be made to reflect any necessary changes in permit conditions, including any necessary effluent limitations for any pollutants not identified and limited herein. A determination will also be made as to whether a National Environmental Policy Act (NEPA) review will be required. Sections 6111.44 and 6111.45, Ohio Revised Code, require that plans for treatment works or improvements to such works be approved by the Director of the Ohio EPA prior to initiation of construction.

D. In addition to the reporting requirements under 40 CFR 122.41(l) and per 40 CFR 122.42(a), all existing manufacturing, commercial mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not limited in the permit. If that discharge will exceed the highest of the "notification levels" specified in 40 CFR Sections 122.42(a)(1)(i) through 122.42(a)(1)(iv).
2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" specified in 122.42(a)(2)(i) through 122.42(a)(2)(iv).

#### 17. TOXIC POLLUTANTS

The permittee shall comply with effluent standards or prohibitions established under Section 307 (a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement. Following establishment of such standards or prohibitions, the Director shall modify this permit and so notify the permittee.

#### 18. PERMIT MODIFICATION OR REVOCATION

A. After notice and opportunity for a hearing, this permit may be modified or revoked, by the Ohio EPA, in whole or in part during its term for cause including, but not limited to, the following:

1. Violation of any terms or conditions of this permit;
2. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
3. Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

B. Pursuant to rule 3745-33-04, Ohio Administrative Code, the permittee may at any time apply to the Ohio EPA for modification of any part of this permit. The filing of a request by the permittee for a permit modification or revocation does not stay any permit condition. The application for modification should be received by the appropriate Ohio EPA district office at least ninety days before the date on which it is desired that the modification become effective. The application shall be made only on forms approved by the Ohio EPA.

#### 19. TRANSFER OF OWNERSHIP OR CONTROL

This permit may be transferred or assigned and a new owner or successor can be authorized to discharge from this facility, provided the following requirements are met:

A. The permittee shall notify the succeeding owner or successor of the existence of this permit by a letter, a copy of which shall be forwarded to the appropriate Ohio EPA district office. The copy of that letter will serve as the permittee's notice to the Director of the proposed transfer. The copy of that letter shall be received by the appropriate Ohio EPA district office sixty (60) days prior to the proposed date of transfer;

B. A written agreement containing a specific date for transfer of permit responsibility and coverage between the current and new permittee (including acknowledgement that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on) shall be submitted to the appropriate Ohio EPA district office within sixty days after receipt by the district office of the copy of the letter from the permittee to the succeeding owner;

At anytime during the sixty (60) day period between notification of the proposed transfer and the effective date of the transfer, the Director may prevent the transfer if he concludes that such transfer will jeopardize compliance with the terms and conditions of the permit. If the Director does not prevent transfer, he will modify the permit to reflect the new owner.

#### 20. OIL AND HAZARDOUS SUBSTANCE LIABILITY

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

#### 21. SOLIDS DISPOSAL

Collected screenings, slurries, sludges, and other solids shall be disposed of in such a manner as to prevent entry of those wastes into waters of the state. For publicly owned treatment works, these shall be disposed of in accordance with the approved Ohio EPA Sludge Management Plan.

#### 22. CONSTRUCTION AFFECTING NAVIGABLE WATERS

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

#### 23. CIVIL AND CRIMINAL LIABILITY

Except as exempted in the permit conditions on UNAUTHORIZED DISCHARGES or UPSETS; nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

#### 24. STATE LAWS AND REGULATIONS

Nothing in this permit shall be construed to preclude the institution of any legal action nor relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Clean Water Act.

#### 25. PROPERTY RIGHTS

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

## 26. UPSET

The provisions of 40 CFR Section 122.41(n), relating to "Upset," are specifically incorporated herein by reference in their entirety. For definition of "upset," see Part III, Paragraph 1, DEFINITIONS.

## 27. SEVERABILITY

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

## 28. SIGNATORY REQUIREMENTS

All applications submitted to the Director shall be signed and certified in accordance with the requirements of 40 CFR 122.22.

All reports submitted to the Director shall be signed and certified in accordance with the requirements of 40 CFR Section 122.22.

## 29. OTHER INFORMATION

A. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

B. ORC 6111.99 provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$25,000 per violation.

C. ORC 6111.99 states that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$25,000 per violation.

D. ORC 6111.99 provides that any person who violates Sections 6111.04, 6111.042, 6111.05, or division (A) of Section 6111.07 of the Revised Code shall be fined not more than \$25,000 or imprisoned not more than one year, or both.

## 30. NEED TO HALT OR REDUCE ACTIVITY

40 CFR 122.41(c) states that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with conditions of this permit.

## 31. APPLICABLE FEDERAL RULES

All references to 40 CFR in this permit mean the version of 40 CFR which is effective as of the effective date of this permit.

## 32. AVAILABILITY OF PUBLIC SEWERS

Notwithstanding the issuance or non-issuance of an NPDES permit to a semi-public disposal system, whenever the sewage system of a publicly owned treatment works becomes available and accessible, the permittee operating any semi-public disposal system shall abandon the semi-public disposal system and connect it into the publicly owned treatment works.

# APPENDIX B

Received: Feb. 11, 2005  
Typed: Feb. 11, 2005  
Auditor

**ORDINANCE NO. 2005- 19**

Amending Section 941.02 of Chapter 941 of the Code of Ordinances of the City of Fostoria, Ohio, relating to sewer rates and declaring an emergency to exist.

**BE IT ORDAINED** by the Council of the City of Fostoria, State of Ohio:

**SECTION 1.** Section 941.03 of Chapter 941 of the Code of Ordinances of the City of Fostoria is hereby amended effective 4/1/2005 to read as follows:

**Section 941.03 RATES**

For the purposes provided in Section 941.02, there is levied and charged upon each lot, parcel of land, or premises having connection with the system, or otherwise discharging sanitary sewage, industrial wastes, water, or other liquids, either served by the system, sewer charges payable as hereinafter provided, and in the amount determined as follows:

**A. Within the City**

With respect to any premises situated within the corporate limits, the charges shall be based upon the quantity of water used on the premises served by the system, as determined pursuant to Section 941.05, and shall be at the following rates:

**{1} Domestic Rates**

Applicable to all service not covered by the commercial and industrial rates provided below:

- {a}** For the first 4,000 cubic feet of water so used per quarter year, at the rate of \$3.44 per 100 cubic feet.
- {b}** For each 100 cubic feet of water in excess of 4,000 cubic feet, and not exceeding 12,000 cubic feet of water per quarter year, at the rate of \$3.00 per 100 cubic feet.

- (c) For each 100 cubic feet of water used in excess of 12,000 cubic feet and not exceeding 52,000 cubic feet per quarter year, at the rate of \$2.71 per 100 cubic feet.
- (d) For each 100 cubic feet of water used in excess of 52,000 feet per quarter year, at the rate of \$2.21 per 100 cubic feet.

(2) Multiple Minimums

Minimum billing shall be the average consumption of the last six (6) months bills regardless of the billing cycle, or 200 cubic feet (monthly), 400 cubic feet (bi-monthly), or 600 cubic feet (quarterly), whichever is greater.

Multiple minimums. Where multi-family dwelling units in excess of three (3) units, multiple structures in excess of three (3) dwelling units per structure and/or mobile home parks are served by a single meter, the total bills shall be the basic minimum rate applicable multiplied by the number of units served, or the calculated bill for the actual consumption measured, whichever is greater.

(3) Private Sewage Disposal Systems

For private sewage disposal systems connected directly or indirectly to the sanitary sewer system, 60% of the domestic rates indicated in division (A) (1).

(4) Commercial and Industrial Rates

Applicable to all commercial, industrial and business establishments:

- (a) For the first 2,000 cubic feet of water per month, the sum of \$3.44 per 100 cubic feet.
- (b) For each 100 cubic feet of water used in excess of 2,000 cubic feet, and not exceeding 7,000 cubic feet per month, at the rate of \$3.00 per 100 cubic feet.
- (c) For each 100 cubic feet of water used in excess of 7,000 cubic feet, and not exceeding 25,000 cubic feet per month, at the rate of \$2.71 per 100 cubic feet.
- (d) For each 100 cubic feet of water used in excess of 25,000 cubic feet per month, at the rate of \$2.21 per 100 cubic feet.

**(5) Minimum**

The minimum charges shall be calculated by an average of prior year usage.

**{6}** With respect to any premises situated within the corporate limits of the city which are not connected to the water distribution system and upon which the Director of Public Service and Safety has determined that it would be impractical to require water metering devices, the sewage rates shall be as follows:

- {a}** For each residence being occupied by one person, the charge will be for 600 cubic feet per quarter at the rates established in this chapter.
- {b}** For each residence being occupied by two persons, the charge will be for 1400 cubic feet per quarter at the rates established in this chapter.
- {c}** For each residence being occupied by three persons, the charge will be for 2200 cubic feet per quarter at the rates established in this chapter.
- {d}** For each residence being occupied by four persons, the charge will be for 2600 cubic feet per quarter at the rates established in this chapter.
- {e}** For each residence being occupied by five persons, the charge will be for 3000 cubic feet per quarter at the rates established in this chapter.
- {f}** For each residence being occupied by six persons, the charge will be for 3200 cubic feet per quarter at the rates established in this chapter.
- {g}** For each residence being occupied by seven persons, the charge will be for 3400 cubic feet per quarter at the rates established in this chapter.
- {h}** For each residence being occupied by eight persons, the charge will be for 3600 cubic feet per quarter at the rates established in this chapter.

- {i} For each residence being occupied by nine persons, the charge will be for 3800 cubic feet per quarter at the rates established in this chapter.
- {j} For each residence being occupied above nine, the quarterly consumption base shall be increased by 200 cubic feet.

**B. Outside the City**

{1} With respect to any premises situated outside the corporate limits which premises now or hereafter have active connection with the system, charges shall be determined on the basis of the size of the sewer connection as follows:

{a}	4" sewer	\$ 98.00
{b}	6" sewer	\$223.00
{c}	8" sewer	\$513.00
{d}	10" sewer	\$805.00
{e}	12" sewer	\$876.00

However, in the event any such premises are using water entering the system measured according to the provisions of Section 941.05, and the rate as determined under the provisions of division {A} of this section, plus a surcharge of 50% thereof, would result in a charge greater than that otherwise provided in this division {B}, then the rates provided in division {A}, plus a surcharge of 50% thereof, shall be used to determine the sewer charges upon the premises.

{2} The Director of Public Service and Safety shall have full discretion to determine what premises located outside the corporate limits shall be permitted to maintain connections with the system, and also to discontinue the service of the system to any premises after having given the owner or occupant thereof at least 30 days written notice of his determination as to whether the connection is advisable and practicable considering the sewer to be used and the capacity of the system.

{3} With respect to any premises situated outside the corporate limits but served by The Wood County Regional Water and Sewer District, the charges shall be determined pursuant to paragraph {1} above except that the surcharge will be 25% subject to the conditions of the agreement with said District.

**C. Surcharge for certain Industrial Wastes**

Where industrial wastes entering the system have a B.O.D. in excess of 300 parts per million, or suspended solids in excess in 350 parts per million, the rates provided for in division {A} {2} and {B} applied to the premises from which the industrial wastes emanate shall be adjusted upward by multiplying them by a factor {F}, determined as follows if the factor shall exceed 1.05:

2 S.S. + 4 B.O.D. + 1200  
3000

{Where S.S. is the parts per million of suspended solids, and B.O.D. is the parts per million of biochemical oxygen demand.}

D. Penalty

A penalty of 5% of the total amount of the charges on each bill for each billing period shall be added to the charges set out if the bill is not paid on or before 15 days after the date of mailing the bill.

SECTION 2. The above sewer rates will raise by 3% across the board on 4/1/2005.

SECTION 3. Current Section 941.03 of Chapter 941 of the Code of Ordinances of Fostoria, Ohio, is hereby repealed effective 4/1/2005.

SECTION 4. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare. The reason for such emergency lies in the fact that this ordinance should be effective immediately in order to meet EPA mandates.

Therefore, upon the affirmative vote of two-thirds (2/3) of all members elected to Council, this ordinance shall go into immediate force and effect.

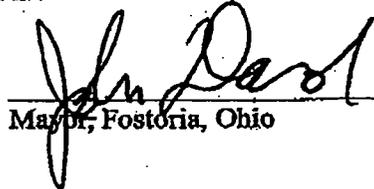
Passed this 15th day of March, 2005.

  
\_\_\_\_\_  
President of Council

ATTEST:

  
\_\_\_\_\_  
Clerk of Council

Filed with me and approved by me this 15th day of March, 2005.

  
\_\_\_\_\_  
Mayor, Fostoria, Ohio