IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO, ex rel. **JIM PETRO** **ATTORNEY GENERAL OF OHIO**	:	**CASE NO. CV88 10 1450**
Plaintiff,	:	**MODIFIED CONSENT ORDER**
vs.	:	
CITY OF HAMILTON	:	
Defendant.	:	

FILED BUTLER CO.
COURT OF COMMON PLEAS
JAN 19 2007
CINDY CARPENTER
CLERK OF COURTS

WHEREAS, the Plaintiff State of Ohio, on relation of its Attorney General ("Plaintiff"), having filed a Complaint in this matter against Defendant, City of Hamilton ("Defendant" or "City" or "Hamilton") (Plaintiff and Defendant shall collectively be referred to as the "Parties"), on behalf of the Director of the Environmental Protection Agency, to enforce *inter alia* the State of Ohio's water pollution control laws and regulations; and

WHEREAS, Plaintiff and Defendant having consented to entry of the Consent Order on May 30, 1991 (the "1991 Consent Order"); and

WHEREAS, certain stipulated revisions of the 1991 Consent Order were made in 1995 by the parties to reflect the progress being made by Defendant to improve its sanitary sewer system.; and

WHEREAS, Plaintiff and Defendant hereby consent to the entry of this Modified Consent Order, which will supersede and completely replace the 1991 Consent Order and all previous revisions entered in this action.

NOW THEREFORE, without trial or admission of any issue of fact or of law, upon the consent of the Parties hereto, and pursuant to the decree of the Court, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the Parties and the subject matter of this case. The Complaint states claims upon which relief can be granted against Defendant. Venue is proper in this Court.

II. CONTINUING JURISDICTION

2. The Court shall retain jurisdiction of this action for the purpose of administering or enforcing the terms and conditions of this Modified Consent Order.

III. PERSONS BOUND

3. All terms and provisions of this Modified Consent Order shall apply to and be binding upon Plaintiff and Defendant and their assigns, successors in interest, assigns in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure. Defendant shall provide a copy of this Modified Consent Order to each key contractor and consultant it employs or enlists to perform work itemized herein. Defendant shall require each key general contractor to provide a copy of this Modified Consent Order to each of its subcontractors for such work. Defendant's compliance with the requirements of this paragraph shall not be a defense to any claim that it has violated any provisions of this Modified Consent Order.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Plaintiff alleged in its Complaint that Defendant has operated its wastewater treatment plant and sanitary sewer system in such a manner as to result in violations of the requirements of the National Pollutant Discharge Elimination System ("NPDES") Permit issued to it by the Director of the Ohio Environmental Protection Agency ("Ohio EPA") and in violation of the water pollution laws of the State of Ohio. In response to that Complaint, the Parties negotiated and entered into a Consent Order, which was filed with this Court on May 30, 1991. The 1991 Consent Order included, among others, a construction schedule for improvements to the Hamilton Wastewater Treatment Plant and the elimination of overflows within Defendant's sanitary sewer system. Plaintiff alleges that Defendant has violated the 1991 Consent Order. Compliance with the terms of this Modified Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims of violations alleged in the Complaint and violations of the 1991 Consent Order including the claims for injunctive relief and civil and stipulated penalties up to the date the parties execute this Modified Consent Order. In addition compliance with the terms of this Modified Consent Order shall constitute full satisfaction of any civil liability to Defendant for violations of Hamilton's NPDES permits which occur (including but not limited to bypasses of secondary treatment at the Hamilton wastewater treatment plant) prior to the date the parties execute this Modified Consent Order.

5. Nothing in this Modified Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against other appropriate persons for claims or conditions alleged in the Complaint. Nothing in this Modified Consent Order shall be construed

to limit the authority of the State of Ohio to seek relief against Defendant or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint. Similarly, nothing in this Modified Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

6. Defendant's agreement to this Modified Consent Order and/or work performed to date does not constitute an admission of any liability, wrongdoing, or misconduct on the part of the Defendant, its officers, employees, or representatives.

V. DEFINITIONS

7. a. "Hamilton's or the City's or the Defendant's sanitary sewer system"- refers to all parts of the collection system the City owns or over which it has operational control.

b. "Satellite collection systems" are areas in which the City is contractually bound to accept another community's sanitary flow but the City does not provide maintenance to the community's collection system.

c. " Sanitary Sewer Overflow" or "SSO" refers to an overflow, spill or release of wastewater from a sanitary sewer system, including interceptor sewers. An SSO that occurs on a city street has the potential to reach waters of the state without treatment, and therefore meets the definition of an SSO. SSO(s) do not include WIB(s) unless the wastewater is discharged or otherwise released to the street.

d. "Water in Basements" or "WIB(s)" refers to a wastewater backup into buildings that are caused by blockages or flow conditions in a sanitary sewer other than a

building lateral. WIB(s) do not include the backup of sewage caused by a blockage or other malfunction in the building's lateral sewer unless the lateral sewer is under the operational control of the City.

e. "Wastewater Treatment Plants"- shall mean the City's plants located at 2451 River Road, Hamilton, Ohio 45015 (Hamilton WWTP) and 367 Heathwood Lane, Hamilton, Ohio 45015 (New London Hills WWTP).

VI. PERMANENT INJUNCTION

8. Defendant is hereby immediately ordered to comply with the requirements of Chapter 6111 of the Ohio Revised Code and the rules adopted thereunder, and the terms and conditions of its currently effective NPDES Permits Nos. 1PE00002*KD and 1P200077*CD, and any renewals or modifications thereof, except as otherwise provided in Section VI of this Modified Consent Order. Defendant shall prevent bypasses and overflows from its wastewater treatment plants and sanitary sewer system, and Defendant shall properly operate and maintain its wastewater treatment plants, sanitary sewer system and any associated equipment and structures. All renewals, modifications or changes to Defendant's NPDES Permits approved by the Director of Ohio EPA and/or effective after the entry of this Modified Consent Order shall be deemed to be incorporated in full and made an enforceable part of this Modified Consent Order.

9. This Modified Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for any such construction or modification or expansion shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

10. Within three (3) months of the execution of this Modified Consent Order, and every three (3) months thereafter until the completion of construction of all improvements as provided in this Section VI, Defendant is ordered to submit a written report stating the improvements that Defendant has completed and the progress of ongoing improvements to Ohio EPA.

11. Defendant shall properly manage, operate and maintain, at all times, all parts of Defendant's sanitary sewer system. This shall include, but not be limited to:

i. providing adequate capacity to convey base flows and peak flows for all parts of the sanitary sewer system;

ii. taking all feasible steps to stop, and mitigate the impact of sanitary sewer overflows from Defendant's sanitary sewer system; and

iii. providing notification to parties with a reasonable potential for exposure to pollutants associated with overflow events.

12. By October 1, 2007, Defendant shall develop and implement a program to address the management and operation and maintenance of its sanitary sewer system. This program will include, but not be limited to:

a. establishing goals to achieve the elements set forth in paragraph 11, above;

b. identifying all administrative and maintenance positions responsible for implementing measures to achieve the goals established in paragraph 12.a. of this Modified Consent Order;

c. identifying the chain of communication for reporting sanitary sewer overflows from receipt of a complaint or other information to the person responsible for reporting to Ohio EPA or, when necessary, to the public;

d. establishing the legal authority through sewer use ordinances, service agreements or other legally binding documents, to:

i. control infiltration and connections from inflow sources;

ii. require that sewers and connections be properly designed and constructed;

iii. ensure proper installation, testing and inspection of new and rehabilitated sewers (such as new or rehabilitated collector sewers and new or rehabilitated service laterals);

iv. address flows from satellite collection systems;

v. implement the general and specific prohibitions of Defendant's pretreatment program.

e. providing adequate maintenance facilities and equipment for its sewers;

f. maintaining a map of Defendant's sanitary sewer system;

g. establishing the proper management of information and the use of timely, relevant information to establish and prioritize appropriate capacity, management, operation and maintenance activities (such as the immediate elimination of dry weather overflows or overflows into sensitive waters such as public drinking water supplies and their source waters, waters where swimming or public contact occurs, waters within State, or local parks, as well as water containing threatened or endangered species or their habitat), and identify and illustrate trends in overflows, such as frequency and volume;

h. conducting routine preventive operation and maintenance activities for its sewers and its satellite collection systems;

i. identifying and prioritizing structural deficiencies and identifying and implementing short-term and long-term rehabilitation actions to address each deficiency;

j. providing all appropriate and necessary training to staff, including staff responsible on a regular basis;

k. establishing inventories for all equipment and replacement parts, including, but not limited to, identification of critical replacement parts;

l. establishing and implementing requirements and standards for the installation of new sewers, pumps and other appurtenances for rehabilitation and repair projects;

m. establishing and implementing procedures and specifications for inspecting and testing the installation of new sewers, pumps and other appurtenances for rehabilitation and repair projects;

n. monitoring the implementation, and when appropriate, measuring the effectiveness, of each element of the program;

o. establishing and implementing a system for updating the program elements, as appropriate, based on monitoring or performance evaluations;

p. establishing communication on a regular basis with interested parties on the implementation and performance of this program. The communication system should allow interested parties to provide input to Defendant as this program is developed and implemented; and

q. utilizing the Defendant's existing numeric identification system for all its sanitary sewer overflows. The Defendant will provide periodic updates of the numeric identification system as necessary.

13. By December 1, 2007, Defendant shall submit to Ohio EPA for approval a written summary of the program it has developed in accordance with paragraph 12(a-q), above. The summary shall address all of the elements set forth in paragraph 12(a-q), above. Defendant shall modify the summary as appropriate to keep it updated and accurate.

14. By October 1, 2008, Defendant shall submit to Ohio EPA a complete audit of the program as set forth in paragraph 12(a-q), above. This report will include but not be limited to evaluating Defendant's compliance with the elements as set forth in paragraph 12(a-q), above. Defendant will identify any deficiencies and all steps that have been taken or will be taken to correct the deficiencies. The audit will include an implementation schedule to correct the deficiencies. Defendant shall correct the deficiencies in accordance with the implementation schedule. The implementation schedule will become a binding and enforceable part of this consent decree.

15. By July 1, 2007, Defendant shall submit to Ohio EPA for approval an Overflow Emergency Response Plan that identifies measures to protect public health and the environment. This plan shall include but not be limited to:

a. a mechanism to ensure that Hamilton is made aware of all SSO(s) and WIB(s) from Hamilton's sanitary sewer system;

b. establishing and implementing procedures to ensure that SSO(s) are appropriately responded to, including ensuring that reports of overflows are immediately dispatched to appropriate personnel for investigation and appropriate responses;

c. establishing and implementing procedures to ensure that appropriate personnel are aware of and follow the Overflow Emergency Response Plan and are appropriately trained;

d. establishing and implementing emergency operations; and

e. establishing and implementing procedures to ensure immediate appropriate notification to the public, the appropriate board of health, and the Ohio EPA as required by paragraph 27. These procedures should be developed in consultation with potentially affected entities.

16. By July 1, 2007, Hamilton shall have implemented the Overflow Emergency Response Plan.

17. By January 1, 2008, Defendant shall submit to Ohio EPA for approval a System Evaluation and Capacity Assurance Plan ("SECAP") including an implementation schedule. The goal of the SECAP and the SECAP implementation schedule is to provide adequate capacity to convey and treat base flows and peak flows for all parts of Defendant's sanitary sewer system, and any satellite collection systems. This plan must include but not be limited to:

a. an evaluation of the portions of Defendant's sanitary sewer system and or treatment plants, that are experiencing or contributing to sanitary sewer overflows caused by hydraulic deficiency or to noncompliance at a treatment plant. The evaluation must provide estimates of peak flows (including flows from SSO(s) that escape from the system) associated with conditions similar to those causing overflow events, provide estimates of the capacity of system components, identify hydraulic deficiencies (including components of the system with limiting capacity) and identify the major sources that contributes to the peak flows associated with overflow events.

b. establishing short- and long- term actions to address each hydraulic deficiency including prioritization, alternatives analysis (including costs), and a schedule for implementation of all recommended projects described in the SECAP. If a project is

not recommended, or if an implementation schedule is impacted due solely to the affordability of the project, the City shall provide an affordability analysis including impacts on user rates.

c. a demonstration that all flows will be transported to the plant for full treatment or a feasibility study in accordance with the requirements in 40 CFR 122.41(m)(4).

d. the plan shall be updated to describe any significant change in proposed actions and/or implementation schedule. The plan shall be updated to reflect current information on the performance measures that have been implemented.

18. The SECAP implementation schedule shall be submitted to Ohio EPA for approval. The implementation schedule shall include an end date of no later than October 1, 2014 by which the City will have achieved the goals set forth in paragraph 17. Additionally, the implementation schedule will include milestone deadlines. These deadlines will include but not be limited to dates that overflows from stations 002, 014, 022, 027 and 037 will be eliminated. If Ohio EPA determines that the proposed schedule is unacceptable, Ohio EPA shall so notify Defendant. If such notice occurs, the parties agree to use good faith efforts to resolve their differences. If the parties are unable to resolve their differences, then either party may petition this Court for additional relief with regard to the implementation schedule, and both parties agree that this Court has jurisdiction to resolve this issue. The implementation schedule, as approved by Ohio EPA and/or this Court, shall be incorporated into this Modified Consent Order and become an enforceable part of the decree. Defendant shall comply with the schedule and perform all of the projects identified in the schedule. The City shall provide Ohio EPA with

annual reports on the progress of the projects set forth in the implementation schedule. The reports shall be due on February 15 of the following year.

VII. OVERFLOW AND BYPASS MONITORING

19. a) Between the effective date of this Modified Consent Order and the time for elimination of all discharges from overflows, Defendant is ordered to monitor its wastewater treatment and sanitary sewer system's overflows and to report the results of such monitoring to the Ohio EPA in the manner and time frames and at the locations set forth below:

OVERFLOW LOCATIONS

1PE00002 014	Overflow from MH63-13	Storm sewer to Two Mile Creek
1PE00002 022	Overflow from MH76-6	Storm sewer to Two Mile Creek
1PE00002 027	Overflow from MH78-36	Two Mile Creek
1PE00002 037	Overflow from MH72-88	Storm sewer to Great Miami River

Hamilton shall monitor the sanitary sewer system overflows at Stations 1PE00002002 through 1PE00002037 and report to Ohio EPA in accordance with the following table:

CHARACTERISTIC			MONITORING REQUIREMENTS	
Reporting			Measurement	
Code	*Units*	*Parameter*	*Frequency*	*Sample Type*
80998	Number/Mo.	Occurrences	When discharging	Estimate
80999	Hours	Duration	When discharging	Daily Estimate
50050	MGD	Flow	When discharging	Daily Estimate

b) Hamilton shall monitor all bypasses that occur at the Hamilton WWTP. Hamilton shall create a physical location for conducting monitoring consistent with the stated description for Station 1PE00002603 that appears below:

Station Number	Description
1PE00002603	Wastewater which bypasses any portion of the secondary treatment system, prior to disinfection.

CHARACTERISTIC			MONITORING REQUIREMENTS	
Reporting			Measurement	
Code	Units	Parameter	Frequency	Sample Type
00051	No. /Day.	Bypass Occurrence	When discharging	24hr Total
00052	Hrs/ Day	Bypass Total Hrs per day	When discharging	24hr Total
00530	mg/l	Suspended Solids	When discharging	Grab
00610	mg/l	Ammonia(NH3)	When discharging	Grab
51428	MGAL	Bypass Volume	When discharging	24hr. Total
80082	mg/l	CBOD5	When discharging	Grab

NOTES for Station Number 1PE00002603:

Data for the bypass volume, bypass occurrence and bypass total hours per day may be estimated if a measuring device is not available. Monitoring and sampling shall be conducted and reported on each day that there is a discharge through this station. Bypass Occurrence- If a discharge from this station occurs intermittently during a day, starting and stopping several times, report "1" for that day. If a discharge from this station occurs on more than one day but is the result of a continuing precipitation event, it should be counted as one occurrence: Report "1" on the first day of the discharge. Monthly Operating Report (Form 4500) for this station must be submitted every month. 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.

VIII. SLUDGE LANDFILL FACILITY

20. As set forth in the 1991 Consent Order and except as provided in the approved Site Stabilization Plan, (The fully approved Site Stabilization Plan is included as Exhibit "C" to the 1991 Consent Order.), Defendant is prohibited from disposing of sludge and other wastes at its sludge disposal facility adjacent to Hamilton WWTP on the Great Miami River without a permit and license issued pursuant to R.C. Chapters 3734 and 6111. Nothing herein shall be construed to limit Defendant's use of its property, including the sludge landfill, so long as such use complies with applicable law and this Modified Consent Order.

21. Defendant is ordered to continue the groundwater monitoring requirements listed in Part IX of the Site Stabilization Plan and the following additional groundwater monitoring tasks:

a. Perform a trend analysis for each parameter at least annually for all wells in the monitoring program and submit the results with the analytical data from the fall sampling event. Sampling shall continue until no increasing trends are identified for all parameters analyzed and the ground water is returned to ambient conditions based on analysis from the two up gradient monitoring wells.

b. Annually compare total depth of the monitoring well to the as built diagrams to determine if the well(s) needs redevelopment due to siltation.

22. Defendant shall submit the results of the tasks in paragraph 21 to Ohio EPA by January 31 of the year following the year in which the tasks were performed. Five (5) years

from the effective date of this Modified Consent Order, the Parties agree to evaluate the need for Defendant to continue groundwater monitoring at the sludge landfill site. At the completion of the five (5) years the Parties will review the monitoring results and determine to what extent the ground water monitoring should continue.

IX. REPORTING, RECORD KEEPING AND PUBLIC NOTIFCATION

23. Defendant must report SSO(s) from its sewers that may imminently and substantially endanger human health pursuant to the terms of this paragraph. A SSO that may imminently and substantially endanger human health includes dry weather overflows, major line breaks, overflow events that result in fish kills or other significant harm, and overflow events that occur in sensitive waters and high exposure areas such as protection areas for public drinking water intakes and waters where primary contact recreation occurs. These reports shall include:

a. notification to the Ohio EPA (1-800-282-9378) and the appropriate Board of Health (i.e., city or county) within one hour of learning of the SSO. The report shall be in accordance with the procedures set forth in the Overflow Emergency Response Plan.

b. a written report to Ohio EPA within five (5) days of the time it became aware of the overflow. The written report shall contain:

i. the location of the SSO including reference to the existing numeric identification system;

ii. the receiving water, if any;

iii. an estimate of the volume of the SSO (if known);

iv. a description of the sewer component from which the release occurred;

v. the estimated date and time when the overflow began and stopped or will be stopped (if known);

vi. the cause or suspected cause of the overflow;

vii. steps taken or planned to reduce, eliminate, and prevent reoccurrence of the overflow and a schedule of major milestones for those steps; and

viii. steps taken or planned to mitigate the impact(s) of the overflow and a schedule of milestones for those steps.

24. Defendant shall report all SSO(s) from its sewers monthly, by submitting a report on the 15th day of the next month. Defendant shall submit its first report on the 15th day after the first full month after this order is entered. The report shall include all the items set forth in paragraphs 23(b)(i) – (viii) of this Modified Consent Order.

25. The City shall prepare an annual report of all SSO(s) and WIB(s) from its sewers. For SSO(s), the report shall include the date, the location, any receiving water, and the estimated volume of the flow. The annual report may summarize overflows of less than approximately 1,000 gallons. The annual report should additionally include a summary section describing overflow events by severity, frequency, and sewer subbasins. The annual report shall summarize the WIB(s) by setting forth the total number of WIB(s) and by listing the number of WIB(s) in each sewer subbasin. The report shall also include a narrative analysis of patterns of the WIB(s) by location, frequency and cause, as well any resultant changes in operations and maintenance procedures. The annual report shall be submitted to Ohio EPA by February 15 of the following

year. Defendant shall make the public aware of the annual report by issuing a press release on its availability, and by making it available on the City's web page.

26. Defendant shall maintain the following records for at least three years:

a. For each SSO and WIB:

i. the location of the SSO (including reference to the existing numeric identification system) or WIB and the receiving water, if any;

ii. the estimated volume of the SSO (if known);

iii. a description of the sewer component from which the release occurred;

iv. the estimated date and time the SSO or WIB began and ended (if known);

v. the cause or suspected cause of the SSO or WIB;

vi. steps taken or planned to reduce, eliminate, and prevent reoccurrence of the overflow and a schedule of milestones for those steps.

vii. work orders which are associated with the investigation of system problems related to SSO(s)or WIB(s);

viii. a list and description of complaints from customers or others;

ix. documentation of performance and implementation measures.

27. The City shall notify the public of SSO(s) from its sanitary sewer system in areas where an overflow has a potential to affect human health. The notification should be in accordance with the Overflow Emergency Response Plan of this Modified Consent Order.

X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

XI. PAYMENT OF STIPULATED PENALTIES AND COSTS

29. Within thirty (30) days of the effective date of this Modified Consent Order, it is hereby ordered that Defendant shall pay to the State of Ohio outstanding stipulated penalties of One Hundred Two Thousand and 00/100 Dollars ($102,000.00). The payment shall be paid by delivering a certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", to Merle Pratt or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

30. Defendant agrees to pay the court costs of this action.

XII. STIPULATED PENALTIES

31. In the event that Defendant fails to meet any of the compliance deadlines and requirements set forth in Sections VI-IX, Defendant shall pay a stipulated penalty according to the following schedule:

(1) For each day of each failure to meet a requirement from one (1) day to thirty (30) days – five hundred dollars ($500.00) per day per requirement not met;

(1) For each day of each failure to meet a requirement from thirty-one (31) to sixty days (60) – seven hundred and fifty dollars ($750.00) per day per requirement not met; and

(2) For each day of each failure to meet a requirement over (61) days – one thousand dollars ($1,000.00) per day per requirement not met.

32. Effective from the date of execution of this Modified Consent Order, Defendant shall pay a stipulated penalty for each unauthorized discharge event from its sanitary sewer system. For purposes of this paragraph, an "event" means each day (up to 24 hours) for each location that an overflow occurred. Defendant shall pay for each unauthorized discharge event according to the following schedule:

a. For each unauthorized discharge event from its sanitary sewer system at Stations 002, 014, 022, 027, or 037 during dry weather flow, Defendant shall pay a stipulated penalty of one thousand dollars ($1,000.00) per event.

b. After the date for elimination of the overflows as set forth in the SECAP implementation schedule referenced in Paragraph 18 of this Modified Consent Order, Defendant shall pay a stipulated penalty of one thousand dollars ($1,000.00) per event for an unauthorized discharge event from its sanitary sewer system at Stations 002, 014, 022, 027, or 037 during wet weather flow.

33. For the purposes of this Modified Consent Order, "dry weather flow" shall mean flow that results from domestic sewage, groundwater infiltration, commercial and industrial

wastewaters, and any other non-precipitation related flows. "Wet weather flow" shall mean a period of precipitation when the flow in the sanitary sewer system exceeds the capacity of the sanitary sewer system.

34. Any payment required to be made under the provisions of Section XII of this Modified Consent Order shall be made by delivering to Merle Pratt, or his successor, at the address set forth in paragraph 29, a certified check or checks, for the appropriate amounts within forty-five (45) days from the date of the failure to meet the requirement of this Modified Consent Order, made payable to "Treasurer, State of Ohio". Defendant shall also state in writing the specific failure of the Modified Consent Order that was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section XII shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Modified Consent Order.

XIII. MISCELLANEOUS

35. Nothing in this Modified Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local law, regulation, rule or ordinance. Defendant shall obtain all federal, state, or local permits necessary to comply with this Modified Consent Order. The Parties may modify this Modified Consent Order by written agreement with the approval of this Court.

36. All documents required to be submitted pursuant to this Modified Consent Order shall be sent to and/or delivered to:

Ohio EPA
Southwest District Office
Division of Surface Water
401 East 5th Street
Dayton, Ohio 45402
ATTN: Compliance and Enforcement Unit Supervisor

37. All written notices, requests, or verifications to be sent to Defendant pursuant to this Modified Consent Order shall be sent to and/or delivered to:

City Manager
City of Hamilton
One Renaissance Center
345 High Street
Hamilton, Ohio 45011

Copy to: Director of Law
City of Hamilton
One Renaissance Center
345 High Street
Hamilton, Ohio 45011

Defendant shall inform the Ohio EPA of any change of its business addresses or telephone numbers, or the cessation of business.

XIV. TERMINATION OF STIPULATED PENALTIES

38. The provisions set forth in Section XII of this Consent Order requiring the payment of stipulated penalties may be terminated upon a demonstration by Defendant that: 1) it has successfully completed the requirements outlined in Sections VI -IX; 2) it has paid all penalties and costs required by this Modified Consent Order; and 3) a minimum twelve (12) consecutive month period of time has occurred after Defendant has successfully achieved compliance with NPDES permit or any renewals or modifications of the permit.

39. Termination of the stipulated penalty section of this Consent Order shall only be by order of the Court upon application by any party, and a demonstration that the conditions outlined in paragraph 38 of this Consent Order have been met.

XV. ENTRY OF MODIFIED CONSENT ORDER AND FINAL JUDGMENT BY CLERK

40. The parties agree and acknowledge that final approval by Plaintiff and Defendant, and entry of this Modified Consent Order is subject to the requirement of 40 C.F.R.§123.27 (d)(2)(iii), which provides for notice of the lodging of this Modified Consent Order, opportunity for public comment, and the consideration of any public comment. Plaintiff and Defendant, reserve the right to withdraw consent to this Modified Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice.

41. Upon the signing of this Modified Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XVI. SIGNATORIES

42. Each of the undersigned representatives for the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Modified Consent Order and legally bind the respective Party to this document.

APPROVED AND SO ORDERED,

By:_____
JUDGE, COURT OF COMMON PLEAS
BUTLER COUNTY

STATE OF OHIO
JIM PETRO

By:_____
TERI J. FINFROCK (0037903)
Assistant Attorneys General
Environmental Enforcement Section
Public Protection Division
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
Email: tfinfrock@ag.state.oh.us

Counsel for
State of Ohio

CITY OF HAMILTON

By:_____
Authorized Representative for the
City of Hamilton

By:_____

KAREN WINTERS (00015731)
Squire, Sanders & Dempsey
41 South High Street
Columbus, Ohio 43215
Telephone: (614) 365-2750
Facsimile: (614) 365-2499
Email: kwinters@ssd.com

Counsel for
City of Hamilton