



**RICHARD CORDRAY**  
OHIO ATTORNEY GENERAL

**MEMORANDUM**

STATEMENT OF CONFIDENTIALITY

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Not for public or unauthorized disclosure.

TO: RICHARD BLASICK, OEPA/NEDO/DSW  
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TIMOTHY CAMPBELL, OEPA/SEDO/DSW  
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MARGARET A. MALONE, AAG/AGO/EES  
L. SCOTT HELKOWSKI, AAG/AGO/EES  
MARTHA SEXTON, AGO/EES

FROM: LAUREN C. ANGELL, AAG, AGO/EES

DATE: MARCH 3, 2010

**Re: State of Ohio ex rel. Richard Cordray v. Pilot Oil Corp. & Pilot Travel Centers LLC,  
Case No. 06CVH-11-14376, Judge Sheward**

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**INTER-OFFICE CORRESPONDENCE**

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Attached please find a copy of the Consent Order that was signed by Judge Sheward on February 23, 2010 (we cannot determine at this time when the journalization date was or will be but will keep you posted). Therefore, for purposes of tracking compliance with this Consent Order, please use February 24, 2010 as day one (1). Please send a copy of this document and cover sheet for anyone whose name does not appear on the list above and who should have a copy of this Consent Order.

Thanks to everyone involved for all of the very hard work that went into making this Consent Order possible.

**IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO**

STATE OF OHIO ex rel.	:	CASE NO. 06CVH-11-14376
RICHARD CORDRAY	:	
OHIO ATTORNEY GENERAL,	:	JUDGE SHEWARD
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
PILOT OIL CORPORATION, et al.	:	
	:	
Defendants.	:	

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**CONSENT ORDER**

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The Complaint in the above-captioned matter having been filed, Plaintiff, State of Ohio, through its Attorney General (“Plaintiff”), and Defendants Pilot Oil Corporation and Pilot Travel Centers LLC (collectively referred to as “Defendant”), have consented to the entry of this Order.

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

**I. JURISDICTION AND VENUE**

1. The Court has both personal and subject matter jurisdiction over the parties. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111 of the Ohio Revised Code (“R.C.”) and the rules promulgated thereunder, and venue is proper in this Court.

## **II. PARTIES**

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure who are acting in concert and/or privity with Defendant. Defendant shall provide a copy of this Consent Order to each general contractor and/or consultant it employs to perform work itemized herein. Defendant shall, by contract, require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

## **III. SATISFACTION OF LAWSUIT**

3. Plaintiff alleges in its Complaint that Defendant has operated Wastewater Treatment Works ("WWTW") and/or Oil and Water Separators that receive flow from diesel dispensing areas ("O/S") at the following 25 Ohio facilities, currently owned and operated by Defendant, in such a manner as to violate Ohio's water pollution control laws:

- \* Pilot #2, 2246 State Route 45, Austinburg, OH 44010 (Ashtabula County);
- \* Pilot #3, 1150 North Canfield-Niles Road, Austintown, OH 44515 (Mahoning County);
- \* Pilot #4, 39115 Colorado Road, Avon, OH 44011 (Lorain County);
- \* Pilot #6, 61700 Southgate Road, Cambridge, OH 43725 (Guernsey County);
- \* Pilot #8, 25600 US Highway 23 South, Circleville, OH 43113 (Pickaway County);
- \* Pilot #9, 6830 Franklin-Lebanon Road, Franklin, OH 45005 (Warren County);
- \* Pilot #11, 10920 Market Street, North Lima, OH 44452 (Mahoning County);
- \* Pilot #12, 3430 Libbey Road, Perrysburg, OH 43551 (Wood County);
- \* Pilot #13, 8924 Lake Road, Seville, OH 44273 (Medina County);
- \* Pilot #14, 7680 East State Route 36, Sunbury, OH 43074 (Delaware County);
- \* Pilot #15, 5820 Hagman Road, Toledo, OH 43612 (Lucas County);
- \* Pilot #16, 5772 US 68 North Wilmington, OH 45177 (Clinton County);
- \* Pilot #130, 5219 Brecksville Road, Richfield, OH 44286 (Summit County);
- \* Pilot #213, 3600 Interchange Rd., Columbus, OH 43204 (Franklin County);

- \* Pilot #239, 1600 East Wyandot Ave., Upper Sandusky, OH 43351 (Wyandot County);
- \* Pilot #281, 2786 Salt Springs Road, Girard, OH 44420 (Trumbull County);
- \* Pilot #285, 10258 Lancaster Road SW, Hebron, OH 43025 (Licking County);
- \* Pilot #286, 6141 US 127 North, Eaton, OH 45320 (Preble County);
- \* Pilot #287, 10048 Avon Lake Road, Burbank, OH 44214 (Wayne County);
- \* Pilot #303, 905 American Road, Napoleon, OH 43545 (Henry County);
- \* Pilot #309, 44133 Fairground Road, Caldwell, OH 43724 (Noble County);
- \* Pilot #360, 11471 State Route 613, West Findlay, OH 45840 (Hancock County);
- \* Pilot #454, 1365 S.R. 42 NE, London, OH 43140 (Madison County);
- \* Pilot #455, 488 State Rt. 61, Marengo, OH 43334 (Morrow County); and
- \* Pilot #457, 427 East Main St., Beaverdam, OH 45808 (Allen County)

("Defendant's 25 Ohio Sites").

4. Plaintiff further alleges in its Complaint that Defendant operated the WWTW and O/S at the Site located at 7837 East Lincoln Highway, Lima, OH 45801, Allen County, formerly owned by Defendant from September 1, 2001 to March 10, 2003, in such a manner as to violate Ohio's water pollution control laws ("Pilot #005").

5. Defendant denies the allegations contained in the Complaint. Nevertheless, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims and violations alleged in the Complaint, any violations alleged in the Complaint that have occurred after the dates alleged in the Complaint through the entry of this Consent Order which have been properly reported to the Ohio Environmental Protection Agency ("Ohio EPA") to the extent required under Ohio law, and any violations that occurred at the Pilot #457 Site in July of 2009 and in October of 2009 that were reported to the Ohio EPA on or before November 20, 2009. Compliance with the terms of this Consent Order shall also constitute full satisfaction of any civil liability by Defendant for any violations of the

terms of the National Pollutant Discharge Elimination System (“NPDES”) Permits identified in Section IV, Paragraph 7 of this Consent Order occurring prior to the entry of this Consent Order that have been properly reported to the Ohio EPA.

6. Nothing in this 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 any violations that occur or continue after the entry of this Consent Order. Further, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against any person(s), other than Defendant, for claims or conditions alleged in the Complaint. Similarly, nothing in this 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.

#### **IV. PERMANENT INJUNCTION**

7. Defendant is permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder at each of Defendant’s 25 Ohio Sites. Except as specifically provided herein, Defendant is further permanently enjoined and immediately ordered to comply with the terms and conditions of the following eight currently held and effective NPDES Permits, and any renewals or modifications thereof, so long as they remain in effect:

- \* Pilot #2 - NPDES Permit No. 3IG00089\*BD for its on-site O/S;
- \* Pilot #11 - NPDES Permit No. 3IG00066\*CD for its on-site O/S;
- \* Pilot #12 - NPDES Permit No. 2IN00147\*CD for its on-site O/S;
- \* Pilot #16 - NPDES Permit No. 1PZ00019\*DD for its on-site WWTW;
- \* Pilot #281 - NPDES Permit No. 3IG00063\*CD for its on-site O/S;
- \* Pilot #285 - NPDES Permit No. 4IN00158\*BD for its on-site WWTW and O/S;
- \* Pilot #286 - NPDES Permit No. 1PZ00020\*ED for its on-site WWTW and O/S; and
- \* Pilot #360 - NPDES Permit No. 2PR00095\*DD for its on-site WWTW.

8. Defendant shall properly operate and maintain the WWTWs, O/Ss and any associated equipment and structures at each of Defendant's 25 Ohio Sites in compliance with R.C. Chapter 6111.

## **V. COMPLIANCE PROGRAM**

### **A. REPORTING REQUIREMENTS - DISCHARGES/RELEASES TO WATERS OF THE STATE FOR SITES HOLDING AN NPDES PERMIT**

9. For all Pilot Sites that currently hold an NPDES Permit, or that hold an NPDES Permit in the future, Defendant shall report: (1) any noncompliance which may endanger health or the environment; (2) any unanticipated bypass which exceeds any effluent limitation in the permit; (3) any upset which exceeds any effluent limitation in the permit; and (4) any violation of a maximum daily discharge limitation for any of the pollutants listed in the permit. All such reports shall be made within 24 hours of Defendant's discovery of each noncompliance, bypass, upset, or violation by telephoning and simultaneously sending electronic mail to the Ohio EPA at the electronic mail addresses and telephone numbers listed below. All such electronic mail and telephone reports shall provide the Ohio EPA with all of the information required by Part III, Paragraph 12(B) of the NPDES Permit.

<b>Ohio EPA District Office</b>	<b>E-Mail Address</b>	<b>Phone Number</b>
Southeast District Office	sedo24hournpdes@epa.state.oh.us	1-800-686-7330
Southwest District Office	swdo24hournpdes@epa.state.oh.us	1-800-686-8930
Northwest District Office	nwdo24hournpdes@epa.state.oh.us	1-800-686-6930
Northeast District Office	nedo24hournpdes@epa.state.oh.us	1-800-686-6330
Central District Office	cdo24hournpdes@epa.state.oh.us	1-800-686-2330

All electronic mail and telephone reports made shall be confirmed in writing within five days of the discovery of the noncompliance, bypass, upset, or violation and this written confirmation shall be submitted to the appropriate Ohio EPA District Office. Each such writing shall contain all information required by Part III, Paragraph 12(C) of the NPDES Permit.

**B. REPORTING REQUIREMENTS - DISCHARGES/RELEASES TO WATERS OF THE STATE**

10. Should any of Defendant's 25 Ohio Sites have a discharge and/or release of oil, as that term is defined by Ohio Administrative Code ("O.A.C.") 3750-1-01(AA), into or upon waters of the state in any amount that causes a film or sheen upon or discoloration of the surface of the "waters of the state," and/or in any amount that causes a sludge or emulsion to be deposited beneath the surface of the waters of the state, Defendant shall immediately (but no later than 30 minutes after a person at the facility has knowledge of the release and/or discharge, unless notification within that time is impracticable under the circumstances) report such situation for each occasion at each Site by calling:

1-800-282-9378.

As soon as practicable (but no later than thirty days after the release), Defendant shall submit a written follow-up emergency notice for the release and/or discharge referenced above in this paragraph to the Ohio EPA. This written report shall include the following information:

- (a) the name of the permittee, and a contact name and phone number;
- (b) the time(s) at which the discharge occurred, and/or was discovered;
- (c) the approximate amount and the characteristics of the discharge;
- (d) the streams(s) or area of property affected by the discharge;
- (e) the circumstances which created the discharge;
- (f) the name and telephone number of the person(s) who have knowledge of these circumstances;
- (g) what remedial steps have been taken; and
- (h) the name and telephone number of the person(s) responsible for such remedial steps.

### **C. REPORTING REQUIREMENTS FOR DISCHARGES/RELEASES TO AREAS OTHER THAN WATERS OF THE STATE**

11. Should any of Defendant's 25 Ohio Sites have a discharge and/or release of oil, as that term is defined by O.A.C. 3750-1-01(AA), into the environment, as that term is defined by O.A.C. 3750-1-01(N), excluding waters of the state, in an amount equal to or exceeding 25 gallons, Defendant shall immediately (but no later than 30 minutes after a person at the facility has knowledge of the release and/or discharge, unless notification within that time is impracticable under the circumstances) report such situation for each occasion at each Site by calling:

1-800-282-9378.

As soon as practicable (but no later than thirty days after the release), Defendant shall submit a written follow-up emergency notice for the release and/or discharge to the Ohio EPA. These verbal and written reports shall be done in the same manner as directed in Paragraph 10 above. The obligation to make the reports imposed above is independent of, and the parties are not currently addressing, whether there is an obligation to provide release notification reports for the types of releases identified in O.A.C. 3750-25-01(B).

**D. PROHIBITION ON DETERGENTS, ANTI-FREEZE AND/OR SURFACTANTS IN ALL OIL AND WATER SEPARATORS, ENVIRONMENTAL CONTROL PONDS, OR WATERS OF THE STATE**

12. Immediately upon the entry of this Consent Order, Defendant is permanently enjoined from discharging any detergent(s), antifreeze or surfactant(s), as a result of Defendant's operations, into any oil and water separator located on any of Defendant's 25 Ohio Sites, into any environmental control pond ("ECP") located on a Site, or into waters of the state, or from employing any detergent(s), antifreeze or surfactant(s) during any power washing activity at any location on any of Defendant's 25 Ohio Sites.

13. By no later than 45 days from the effective date of this Consent Order, Defendant shall place the following language in the Preventative Maintenance Checklists and in all oil and water separator Inspection Logs kept at each of Defendant's 25 Ohio Sites, and in any other documents that Defendant uses or will use to train any of its employees:

*Under no circumstances will Pilot discharge detergents, antifreeze or surfactants to any oil and water separator, environmental control pond, or waters of the state. These materials have the potential for detrimental effects on the function of the oil & water separator, on any environmental control ponds, and on the environment.*

**E. RESERVATION OF RIGHT TO REQUIRE THE SUBMITTAL OF PERMITS TO INSTALL AND NPDES PERMIT APPLICATIONS**

14. Notwithstanding Section III, Paragraph 5 of this Consent Order, with the exception of Pilot sites #213 and #455, Plaintiff hereby specifically reserves the right to require Defendant to submit an as-built Permit to Install (“PTI”) application for any of Defendant’s remaining 23 Ohio Sites that do not have an approved PTI for any of the wastewater treatment devices located on any given Site, and to use any documents or evidence, generated in the past, present or future, to do so.

15. Notwithstanding Section III, Paragraph 5 of this Consent Order, with the exception of Pilot sites #213 and #455, Plaintiff hereby specifically reserves the right to require Defendant to submit an NPDES Permit application for any of Defendant’s Ohio Sites to the extent that they have an unpermitted point source discharge to waters of the state, and to use any documents or evidence, generated in the past, present or future, to do so.

**F. PROPER HANDLING OF POWER WASH WATER**

16. Immediately upon the entry of this Consent Order, Defendant is permanently enjoined to ensure that no power washing activity is conducted in the diesel dispensing areas at any of Defendant’s 25 Ohio Sites unless and until one of the following has taken place:

- i. Defendant has ensured that any and all power wash water is collected as it is being generated and is either discharged to the sanitary sewer system at the given Pilot Site pursuant to approval received from the local publicly owned treatment works ("POTW") or hauled to and properly disposed of at an approved POTW; or
- ii. Defendant has received a PTI and an NPDES Permit authorizing the treatment works or disposal system and the discharge of treated power wash water to waters of the state and the treatment works or disposal system has been built and is fully operational; or
- iii. Defendant has ensured that any and all power wash water is routed through an O/S and an ECP with a properly installed Turn-Down 90 valve and the discharge of power wash water from a given Pilot Site has not resulted in a violation of any Ohio Water Quality Standard set forth in O.A.C. 3745-1.

#### **G. REQUIREMENT TO OBTAIN PERMITS TO INSTALL**

17. Defendant is prohibited from causing, permitting, or allowing the installation of a new disposal system, as that term is defined in R.C. 6111.01, or from causing, permitting, or allowing the modification of an existing disposal system, as that term is defined in R.C. 6111.01, without first obtaining a PTI from the Director.

#### **H. ABANDONMENT OF PACKAGE PLANTS**

##### **PILOT #16**

18. By no later than 180 days from the date that the Ohio EPA informs Defendant in writing that publicly owned sanitary sewers are available and accessible to the Pilot #16 Site, Defendant shall submit a PTI application, in accordance with O.A.C. 3745-42, to the Ohio EPA for abandonment of the Pilot #16 package plant and connection of its sanitary discharge to a regional sanitary sewer collection system. Thereafter, Defendant shall abandon its package plant

and connect to a regional sanitary sewer collection system in accordance with the following schedule:

- i. By no later than 480 days from the date that the Ohio EPA informs Defendant in writing that public sanitary sewers are available and accessible to the Pilot #16 Site, Defendant shall begin construction of the connection to a regional sanitary sewer collection system in accordance with the Ohio EPA approved PTI.
- ii. By no later than 630 days from the date that the Ohio EPA informs Defendant in writing that public sanitary sewers are available and accessible to the Pilot #16 Site, Defendant shall complete construction of the connection to a regional sanitary sewer collection system in accordance with the Ohio EPA approved PTI.
- iii. By no later than 670 days from the date that the Ohio EPA informs Defendant in writing that public sanitary sewers are available and accessible to the Pilot #16 Site, Defendant shall permanently abandon its existing package plant and connect to a regional sanitary sewer collection system. Thereafter, there shall be no further discharges to waters of the state from the Pilot #16 package plant.

#### **PILOT #285**

19. Defendant submitted a complete PTI application to the Ohio EPA for abandonment of the Pilot #285 package plant and connection of its sanitary discharge to a regional sanitary sewer collection system on July 23, 2009, and the Director approved the application on August 14, 2009. Defendant shall abandon its package plant and connect to a regional sewer collection system in accordance with the following schedule:

- i. By no later than April 1, 2010, Defendant shall begin construction of the connection to a regional sanitary sewer collection system in accordance with the Ohio EPA approved PTI.
- ii. By no later than November 30, 2010, Defendant shall complete construction of the connection to a regional sanitary sewer collection system in accordance with the Ohio EPA approved PTI.

iii. By no later than December 31, 2010, Defendant shall permanently abandon and properly decommission its existing package plant and connect to a regional sanitary sewer collection system. After December 31, 2010, Defendant shall direct all wastewater flow from the Pilot #285 package plant to the regional sanitary sewer collection system.

20. Until December 31, 2010, or such time as Defendant connects the Pilot #285 package plant to the regional sanitary sewer collection system, whichever is sooner, Defendant is enjoined and ordered to maintain in good working order and operate as efficiently as possible any treatment works at Pilot #285 and to comply with NPDES Permit No. 4IN00158\*BD, or any renewals or modifications thereof, except for the final numeric effluent limitations for total suspended solids, oil & grease, ammonia nitrogen (summer), ammonia nitrogen (winter), fecal coliform and CBOD<sub>5</sub> that are listed in Part I.A. of the permit. Defendant is enjoined and ordered to comply with the following interim effluent limits until such time as Defendant connects the Pilot #285 package plant to the regional sanitary sewer collection system, or by December 31, 2010, whichever is sooner:

**INTERIM EFFLUENT LIMITS**

<b>POLLUTANT</b>	<b>UNITS</b>	<b>CONCENTRATION</b>	<b>LOADING</b>
TSS	mg/l	23 (monthly average)	1.17 (monthly average)
Oil & Grease	mg/l	10 (monthly average)	-----
Ammonia Nitrogen-Summer	mg/l	6 (monthly average)	0.32 (monthly average)
Ammonia Nitrogen-Winter	mg/l	4.50 (monthly average)	0.24 (monthly average)
Fecal Coliform	#/100 ml	2000 (monthly average)	-----
CBOD <sub>5</sub>	mg/l	15 (monthly average)	0.80 (monthly average)

21. By no later than July 1, 2010 for Pilot Site #285, Defendant shall submit a report that has been prepared and stamped by an engineer that indicates the location of all areas on the Site

that fall within the 100-year flood plain or that are subject to flooding due to drainage conditions.

In addition, this report shall include the elevation, in feet above sea level, of the 100-year flood level and the static water level of all oil and water separators located on Pilot Site #285 (the static water level of the oil and water separator is the water surface within the oil and water separator when water begins to enter the discharge outlet).

22. If the static water level of any oil and water separator at Pilot Site #285 is below the level of the 100-year flood plain, or if any oil and water separator is located within an area determined to be subject to flooding, by no later than 90 days after the timely submittal of the report referenced in Paragraph 21, Defendant shall submit an addendum to the report, prepared and stamped by an engineer, specifying flood protection measures which may include, at a minimum, an influent valve and dike to prevent flood waters from entering the oil and water separator. By no later than 90 days after the timely submittal of the addendum to the report referenced in Paragraph 21, Defendant shall implement the flood protection measures detailed in the addendum as approved by the Director.

#### **PILOT #360**

23. Defendant submitted a complete PTI application to the Ohio EPA for abandonment of the Pilot #360 package plant and connection of its sanitary discharge to a regional sanitary sewer collection system on July 17, 2009, and the Director approved the application on August 5, 2009. Defendant shall abandon its package plant and connect to a regional sewer collection system in accordance with the following schedule:

i. By no later than April 1, 2010, Defendant shall begin construction of the connection to a regional sanitary sewer collection system in accordance with the Ohio EPA approved PTI.

ii. By no later than November 30, 2010, Defendant shall complete construction of the connection to a regional sanitary sewer collection system in accordance with the Ohio EPA approved PTI.

iii. By no later than December 31, 2010, Defendant shall permanently abandon and properly decommission its existing package plant and connect to a regional sanitary sewer collection system. After December 31, 2010, Defendant shall direct all wastewater flow from the Pilot #360 package plant to the regional sanitary sewer collection system

24. Until December 31, 2010, or such time as Defendant connects the Pilot #360 package plant to the regional sanitary sewer collection system, whichever is sooner, Defendant is enjoined and ordered to maintain in good working order and operate as efficiently as possible its treatment works at Pilot #360 and comply with NPDES Permit No. 2PR00095\*DD, or any renewal or modification thereof, except for the final numeric effluent limitations for total suspended solids, ammonia nitrogen (summer), ammonia nitrogen (winter) and CBOD<sub>5</sub> that are listed in Part I.A. of the permit. Defendant is enjoined and ordered to comply with the following interim effluent limits until such time as Defendant connects the Pilot #360 package plant to the regional sanitary sewer collection system, or by December 31, 2010, whichever is sooner:

**INTERIM EFFLUENT LIMITS**

POLLUTANT	UNITS	CONCENTRATION	LIMIT LOAD
TSS	mg/l	18 (monthly average)	0.68 (monthly average)
Ammonia Nitrogen-Summer	mg/l	2.25 (monthly average)	0.086 (monthly average)
Ammonia Nitrogen-Winter	mg/l	4.5 (monthly average)	0.17 (monthly average)
CBOD <sub>5</sub>	mg/l	15 (monthly average)	-----

**I. OIL AND WATER SEPARATORS, ENVIRONMENTAL CONTROL PONDS, TURN-DOWN 90 VALVES, AND PERMITS TO INSTALL**

**a. Confirmation of Presence of Oil and Water Separators, Environmental Control Ponds, and Turn-Down 90 Valves in the Environmental Control Ponds**

25. With the exception of Pilot Sites #213 and #455, by no later than 90 days from the effective date of this Consent Order, Defendant shall submit a report to the Ohio EPA confirming the presence of or lack of (an) O/S(s) at each of Defendant's remaining 23 Ohio Sites.

26. With the exception of Pilot Sites #213 and #455, by no later than 90 days from the effective date of this Consent Order, Defendant shall submit a report to the Ohio EPA confirming the presence of or lack of (an) ECP(s) at each of Defendant's remaining 23 Ohio Sites. For each ECP found, Defendant shall state whether the ECP receives flow from an O/S only, from an O/S and from other areas of the Site, or from other areas of the Site only. In addition, for each ECP identified, Defendant shall state whether or not it is equipped with a Turn-Down 90 Valve and, if it is, provide the exact location on the ECP of the Turn-Down 90 Valve.

**b. PTIs For Missing Oil and Water Separators, Environmental Control Ponds, And Turn-Down 90 Valves**

27. With the exception of Pilot Sites #213 and #455, for each of Defendant's Ohio Sites that lack: (1) an O/S; and/or (2) an ECP that will receive flow from an O/S; and/or (3) a turn-down 90 valve for an ECP that will receive flow from an O/S, Defendant shall submit a PTI application in accordance with O.A.C. 3745-42, to the Director for authorization to install any of the three structures that it lacks at each of Defendant's remaining 23 Ohio Sites. These PTI

applications shall be submitted to the Director by no later than 180 days from the effective date of this Consent Order.

28. With the exception of Pilot sites #213 and #455, for each of Defendant's remaining 23 Ohio Sites that lack: (1) an O/S; and/or (2) an ECP that will receive flow from an O/S; and/or (3) a Turn-Down 90 Valve for an ECP that will receive flow from an O/S, Defendant shall install each of the three structures that it lacks at each of these Sites. Each of Defendant's remaining 23 Ohio Sites shall be equipped with: (1) an O/S that receives all flow from all diesel dispensing areas; (2) an ECP that receives all flow from all O/Ss; and (3) Turn-Down 90 Valves on each ECP that receives flow from any diesel dispensing area. Defendant shall properly operate and maintain all O/Ss, ECPs and Turn-Down 90 Valves located on each of Defendant's remaining 23 Ohio Sites.

**c. Submittal of As-Built Permit to Install Applications For Pilot Sites #12, and #13**

29. Within 210 days from the effective date of this Consent Order, Defendant shall submit a PTI application in accordance with O.A.C. 3745-42, to the Ohio EPA for each O/S and for each ECP that receives flow from an O/S, located on Pilot Sites #12 and #13. These PTI applications shall include, at a minimum, the following:

i. A detailed Site plan including the following:

(i) The number, location, pipe size, inlet and outlet elevations, and discharge points of all storm sewers serving the Site and the tributary area routed into each storm sewer catch basin at the Site. All accumulations of water or any water conveyance system that receives the storm water discharge must be shown. If storm sewers are routed into a pond then the pond outlet(s) must be shown along with the subsequent drainage way;

(ii) The locations, pipe sizes and discharge points for sanitary sewage generated at the Site. If sanitary sewer service is already provided to the Site by a POTW, then the name and telephone number of the POTW must be provided, along with the name and telephone number of a designated contact person at the POTW;

(iii) "As Built" information for the Site's O/S. This must include, at a minimum:  
the design specifications;  
the drainage areas routed into the O/S;  
the point of discharge;  
design calculations used to determine the type and size of the O/S;  
the maximum discharge flow for which the O/S was designed;  
characterization of wastewater routed into and discharged from the O/S;  
and O/S inspection and maintenance requirements.

ii. The locations of all observation and monitoring wells at each facility;

iii. The O/S cleaning frequency;

iv. An updated O/S inspection log form with a notation stating the required cleaning frequency for the Site in the notes portion of the O/S inspection log; and

v. A topographical map or its equivalent demonstrating the grade and drainage patterns of the parking lot and diesel dispensing areas of the Site.

**d. Locks on O/S Covers**

30. Within ninety days of the Court's journalization of this Consent Order, Defendant shall have placed a lock on the cover of each O/S located on each of Defendant's 25 Ohio Sites. Thereafter, the lock to each O/S located on each of Defendant's 25 Ohio Sites shall be placed under the direct supervision and control of the manager of each Site.

## **J. SPILL PREVENTION, CONTROL AND COUNTERMEASURE PLANS**

31. Defendant shall comply with the terms and conditions of the Spill Prevention, Control and Countermeasure Plans that it has prepared and submitted pursuant to the United States Code of Federal Regulation, Title 40 Part 112 at each of Defendant's 25 Ohio Sites.

### **VI. SUBMITTAL OF DOCUMENTS**

32. Except as otherwise specifically required herein, whenever Defendant is required to notify the Ohio EPA or the Director in writing, or to submit anything in writing to the Ohio EPA or the Director regarding anything addressed in this Consent Order, Defendant shall submit such written notification to the Ohio EPA at the following addresses:

For Pilot Sites #12, #15, #303, #360, #457:  
347 North Dunbridge Road  
Bowling Green, OH 43402  
Attn: Elizabeth Wick/DSW, or her successor

For Pilot Sites #2, #3, #4, #11, #13, #130, #281, #287:  
2110 East Aurora Road  
Twinsburg, OH 44087  
Attn: Richard Blasick/DSW, or his successor

For Pilot Sites #9, #16, #286:  
401 East Fifth Street  
Dayton, OH 45402  
Attn: Martyn Burt/DSW, or his successor

For Pilot Sites #6, #309:  
2195 Front Street  
Logan, OH 43138  
Attn: Timothy Campbell/DSW, or his successor

For Pilot Sites #8, #14, #213, #285, #454, #455:  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216  
Attn: Erin Sherer/DSW, or her successor

## **VII. REVIEW OF SUBMITTALS AND RESUBMITTALS**

33. Unless otherwise specified in this Consent Order, if the Ohio EPA determines that any report, PTI application, NPDES Permit application, or other document submitted pursuant to this Consent Order is incomplete or cannot be approved as submitted, then Defendant shall resubmit the document to the Ohio EPA within fourteen business days of the receipt of a deficiency notification from the Ohio EPA, unless the Ohio EPA extends the date for resubmittals in writing. Further submittals of the document shall also be made by the Defendant to the Ohio EPA within 14 business days of the receipt of a subsequent deficiency notification from the Ohio EPA unless the Ohio EPA extends the date for resubmittals in writing. This process may be followed up to three times for each different document submittal made pursuant to this Consent Order without triggering the imposition of stipulated penalties, provided each submittal was timely made. Should the Ohio EPA make a determination for a fourth time that a particular report, PTI application, NPDES Permit application, or other document submitted pursuant to this Consent Order, is incomplete, or cannot be approved as submitted, then Defendant shall be deemed to have failed to comply with the requirement imposed by this Consent Order to submit the report, PTI application, NPDES Permit application, or other document. Upon the Director's final authorization, Defendant shall implement the

improvements in accordance with a schedule authorized by the Director. This schedule for implementing the improvements, when authorized by the Director, shall be considered to be incorporated into Section V of this Consent Order and fully enforceable as a requirement of this Consent Order.

#### **VIII. CIVIL PENALTY**

34. Defendant shall pay to the State of Ohio, pursuant to R.C. Chapter 6111.09, a cash civil penalty of One Hundred Thousand Dollars (\$100,000). The civil penalty paid pursuant to this paragraph shall be paid by delivering a certified check, in the amount of One Hundred Thousand Dollars (\$100,000), within 30 days of the entry of the Consent Order to the following address:

Ohio Attorney General's Office  
State Office Tower  
30 E. Broad Street, 25<sup>th</sup> Floor  
Environmental Enforcement Section  
Columbus, Ohio 43215 - 3400

Attention: Karen Pierson, or her successor

This certified check shall be made payable to "Treasurer, State of Ohio."

#### **IX. BENEFICIAL ENVIRONMENTAL PROJECT**

35. Defendant shall create a trust or escrow account with an established financial institution within 30 days of the effective date of this Consent Order. Defendant shall pay at least Four Hundred Seventy-Five Thousand Dollars (\$475,000) into said trust or escrow account within 60 days of the effective date of this Consent Order. Money in the trust or escrow account shall be used for the purpose of funding projects undertaken by or on behalf of Defendant and/or

Licking County that improve the environment by reducing or preventing pollutant impacts to waters of the State of Ohio by extending existing public sanitary sewers to serve the areas located in and around the State Route 37 corridor north of U.S. Interstate 70 within Union Township, Licking County, Ohio. This trust or escrow account shall state that the disbursement(s) from the trust/escrow account shall be made by the trustee or escrow agent only to Defendant or Licking County and only upon written approval from the Chief of the Ohio EPA's Division of Surface Water ("Chief") in the amount authorized by the written approval of the Chief.

36. The Chief will not provide a written approval for the disbursement of trust or escrow account funds unless the Chief has first received a written disbursement request from Defendant or Licking County. When a disbursement of trust or escrow account funds is needed, Defendant or Licking County shall submit a written disbursement request that demonstrates that the money will be used by or on behalf of Defendant and/or Licking County to extend Licking County's existing public sanitary sewers or to build new sewers that will be owned and operated by Licking County as part of its Publicly Owned Treatment Works and will serve the areas located in and around the State Route 37 corridor north of U.S. Interstate 70 within Union Township, Licking County, Ohio. If the Chief approves the requested disbursement of trust or escrow account funds in advance of the due date for the payment of the invoice(s) to which the disbursement request pertains, Defendant and/or Licking County shall utilize the disbursed funds to pay the invoice(s) of the contractor(s) retained by Defendant and/or Licking County to extend Licking County's existing public sanitary sewers or to build new sewers that will be owned and operated by Licking County as part of its Publicly owned Treatment Works and will serve the

areas located in and around the State Route 37 corridor north of U.S. Interstate 70 within Union Township, Licking County, Ohio. If approval of the Chief is not received by the due date for the payment of the invoice(s) to which the disbursement request pertains, then Defendant and/or Licking County may: (1) advance the funds necessary to pay the invoice(s) of the contractor(s) retained by Defendant and/or Licking County to extend Licking County's existing public sanitary sewers or to build new sewers that will be owned and operated by Licking County as part of its Publicly owned Treatment Works and will serve the areas located in and around the State Route 37 corridor north of U.S. Interstate 70 within Union Township, Licking County, Ohio; and (2) submit an after-the-fact request to the Chief, in writing, seeking a disbursement of trust or escrow account funds to reimburse Defendant and/or Licking County for the funds advanced to pay the contractor invoice(s) in question. Any such after-the-fact disbursement request shall demonstrate that the funds that were advanced by Defendant and/or Licking County were used to pay the invoice(s) of the contractor(s) retained by Defendant and/or Licking County to extend Licking County's existing public sanitary sewers or to build new sewers that will be owned and operated by Licking County as part of its Publicly owned Treatment Works and will serve the areas located in and around the State Route 37 corridor north of U.S. Interstate 70 within Union Township, Licking County, Ohio.

37. No funds shall be released or disbursed from the escrow account without the prior written approval of the Chief pursuant to Paragraph 36 above.

38. If the Chief determines that the written disbursement request meets the requirements outlined in Paragraph 36, the Chief will inform Defendant and Licking County in writing of this

determination and will state that the trustee or escrow agent may release the pertinent amount of the funds from the trust or escrow account. Without the written approval of the Chief to release funds, the trustee or escrow agent is prohibited from releasing any trust or escrowed funds. If the trust or escrow account is interest bearing, escrow fees and other costs of the account may be deducted first from the interest, but the remainder of the interest will be disbursed in accordance with this paragraph.

39. Defendant and/or Licking County will have four years from the entry of this Consent Order to complete the beneficial environmental project referenced in Section IX and receive approval from the Ohio EPA for the trustee or the escrow agent to release the funds. If Licking County and/or Defendant has completed the beneficial environmental project in question and submitted the related written disbursement request to the Chief within the four year period, but one or more of the disbursement requests has not yet been approved, Licking County and/or Defendant will have an additional year to obtain the Chief's approval. If four years after the entry of this Consent Order, or after the one year extension if it is applicable, Defendant or Licking County has not completed the beneficial environmental project referenced in Section IX and submitted one or more written disbursement requests to the Chief for the release of all or some of the trust or escrowed funds, all remaining funds, including any interest, shall be paid by the trustee or escrow agent to the Ohio EPA at the address listed in Paragraph 34, for deposit into the Surface Water Protection Fund established under R.C. 6111.038, unless the Chief extends the date for completion of the beneficial environmental project in writing.

40. Nothing in this paragraph or the Consent Order as a whole prevents the Ohio EPA

from approving a substitute beneficial environmental project proposed by Defendant, but nothing under this paragraph or the Consent Order obligates Defendant to make such a substitute proposal. Nothing in this paragraph or the Consent Order as a whole grants any right to Licking County to sue or otherwise seek to enforce the provisions of the Consent Order against the State of Ohio, the Ohio EPA, or Defendant.

#### **X. STIPULATED PENALTIES**

41. In the event that Defendant fails to meet any of the requirements of Sections IV and V of this Consent Order, or the requirement in Section VII that Defendant resubmit an application to the Ohio EPA within fourteen business days of the receipt of a deficiency notification, excluding failures to meet the final effluent limitations and/or monitoring requirements contained in any of the NPDES Permits referenced in Paragraph 7 above or the interim effluent limitations set forth in Paragraphs 20 and 24 above, Defendant shall immediately and automatically be liable for, and shall pay a stipulated penalty according to the following payment schedule:

- i. For each day of each failure to meet a requirement of Sections IV, V or the resubmittal requirements of Section VII of this Consent Order, up to a total of 30 days - five hundred dollars (\$500.00) per day per requirement not met;
- ii. For each day of each failure to meet a requirement of Sections IV, V or the resubmittal requirements of Section VII of this Consent Order, from 31 to 60 days - seven hundred and fifty dollars (\$750.00) per day per requirement not met;
- iii. For each day of each failure to meet a requirement of Sections IV, V or the resubmittal requirements of Section VII of this Consent Order, over 60 days - one thousand dollars (\$1000.00) day per requirement not met.

42. In the event that Defendant fails to meet any of the final effluent and/or monitoring requirements contained in any of the NPDES Permits referenced in Paragraph 7 above, or any renewals or modifications thereof, or the interim effluent limitations and/or monitoring requirements set forth in Paragraphs 20 and 24 above, Defendant shall immediately and automatically be liable for, and shall pay a stipulated penalty according to the following payment schedule:

**i. Daily Effluent Limits and Monitoring Requirements**

For each day of each failure to comply with a daily effluent limit in any NPDES Permit, from 1 day to 30 days – \$500.00 per day per daily effluent limit not met;

For each day of each failure to comply with a daily effluent limit in any NPDES Permit from 31 days to 60 days - \$750.00 per day per daily effluent limit not met;

For each day of each failure to comply with a daily effluent limit in any NPDES Permit from 61 days to 90 days– \$1000.00 per day per daily effluent limit not met.

For each day of each failure to comply with a daily effluent limit in any NPDES Permit over 90 days – \$1,250.00 per day per daily effluent limit not met.

The provisions of this sub-paragraph apply to each separate daily effluent limit.

**ii. 7 Day Average Effluent Limits and Monitoring Requirements**

For each first through fourth consecutive failure to meet any 7 day average effluent limitation, \$1000.00 for each 7 day period during which each failure occurs;

For each fifth through eighth consecutive failure to meet any 7 day average effluent limitation, \$1,250.00 for each 7 day period during which each such failure occurs;

For each ninth through eleventh consecutive failure to meet any 7 day average effluent limitation, \$1,500.00 for each 7 day period during which each such failure occurs;

For each failure beyond the eleventh consecutive failure to meet any 7 day average effluent limitation, \$1,750.00 for each 7 day period during which each such failure occurs.

The provisions of this sub-paragraph apply to each separate 7 day average effluent limit.

### **iii. 30 Day Average Effluent Limits and Monitoring Requirements**

For each failure to meet any 30 day average effluent limitation, \$2,000.00 for each 30 day period during which each such failure occurs;

For each second consecutive failure to meet any 30 day average effluent limitation, \$2,500 for each 30 day period during which each such consecutive failure occurs;

For each third consecutive failure to meet any 30 day average effluent limitation, \$3,000 for each 30 day period during which each such consecutive failure occurs;

For each failure beyond the third consecutive failure to meet any 30 day average effluent limitation, \$3,500 for each 30 day period which each such consecutive failure occurs.

The provisions of this sub-paragraph apply to each separate 30 day average effluent limit.

43. For the purpose of calculating stipulated penalties under the provisions of Paragraph 42, each 7 day period of violations of a specific 7 day average effluent limit shall be calculated as a single violation. For the purpose of calculating stipulated penalties under the provisions of Paragraph 42, each 30 day period of violation of a specific 30 day average effluent limit shall be calculated as a single violation.

44. Liability for any stipulated penalty herein is included immediately upon any violation as stated within Sections IV, V or the resubmittal requirements of Section VII or any of the NPDES Permits referenced in Paragraph 7 above, or any renewals or modifications thereof, and no further notice or demand from Plaintiff shall be necessary. Any stipulated penalty required to be paid pursuant to the provisions of Paragraph 41 or 42 of this Consent Order shall be made by delivering a certified check or checks for the appropriate amounts, to the order of "Treasurer, State of Ohio," within 45 days from the date of the failure to comply with this Consent Order. Said check or checks shall be mailed to the address previously listed in Paragraph 34 of this Consent Order. Defendant shall also state in writing the specific failure of the Consent Order, and the dates of non-compliance. Payment of stipulated penalties and acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to this section of the Consent Order shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 6111 or to otherwise seek judicial enforcement of this Consent Order.

#### **XI. TERMINATION OF STIPULATED PENALTIES**

45. Defendant may move this Court to terminate Section X, Paragraph 42, the Stipulated Penalty Section applicable to violations of any of the effluent limitations contained in Defendant's NPDES permit(s) and this Consent Order, upon a demonstration by Defendant that:

- 1) it has paid all penalties required by this Consent Order;
- 2) it has been in compliance with the obligations of this Consent Order for the previous 24 months; and
- 3) for any Pilot Site for which Defendant seeks to have the stipulated penalty provisions terminated, it has achieved and maintained compliance with all final effluent limitations contained in the NPDES Permit or any

renewals or modifications thereof and interim effluent limitations contained in this Consent Order applicable to that Site for a period of 24 consecutive months from the entry of this Consent Order. Termination of Section X, Paragraph 42, the Stipulated Penalty Section applicable to violations of the effluent limitations contained in Defendant's NPDES permit(s) and this Consent Order, shall only be by order of this Court upon motion by any party, and a demonstration that the conditions outlined in this paragraph have been met.

46. Defendant may move the Court to terminate the Stipulated Penalty provisions in Section X, Paragraph 41 applicable to violations of Sections IV, V and the resubmittal requirements of Section VII of this Consent Order, excluding violations of the final effluent limitations contained in any of the NPDES Permits referenced in Paragraph 7 above or the interim effluent limitations set forth in Paragraphs 20 and 24 above upon a demonstration by Defendant that: 1) it has paid all penalties required by this Consent Order; and 2) it has completed all tasks and achieved and maintained compliance with all terms and conditions in Sections IV, V and the resubmittal requirements of Section VII of this Consent Order for a period of 12 consecutive months from the entry of this Consent Order. Termination of the Stipulated Penalty provisions contained in Section X, Paragraph 41 of this Consent Order shall only be by order of the Court upon motion by any Party, and a demonstration that the conditions outlined in this paragraph have been met.

## **XII. POTENTIAL FORCE MAJEURE**

47. If any event occurs which causes or may cause a delay in achieving compliance with any of the requirements of this Consent Order, including the failure to receive any state or local

permit or authorization required to achieve compliance with Section V of this Consent Order, Defendant shall notify the Ohio EPA in writing within 10 days of the event or failure, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which such measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

48. In any action by Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances, or acts or omissions of a governmental or regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and Plaintiff 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 that an enforcement action, if any, is commenced by Plaintiff. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of this section shall render this section void and of no force

and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order with a Potential Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

### **XIII. EFFECT OF CONSENT ORDER**

49. This Consent Order does not constitute authorization or approval for the construction or modification of any physical structure, facility, disposal system, treatment works or sewerage system, or for the placement of fill in streams, wetlands, or other "waters of the state."

Authorization or approval for any such construction, modification or fill shall be by permit issued by the Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules, or regulations. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

Defendant shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order. This Consent Order does not limit Defendant's right to appeal any permit issued to Defendant pursuant to existing law.

#### **XIV. MISCELLANEOUS PROVISION**

50. This Consent Order is not and shall not be interpreted to be a permit or a modification of any existing permit issued pursuant to R.C. Chapter 6111. This Consent Order does not authorize the installation of modification or operation of any treatment works or disposal system. Defendant shall obtain all necessary permits, certificates or approvals required under federal, state, or local law, regulation or ordinance in order to undertake the work contemplated by this Consent Order and/or any other installation or modification of any facility. The parties acknowledge and agree that issuance, renewal, modification, denial or revocation of (a) permit(s) and/or the issuance of orders or other actions of the Director are not subject to challenge or dispute before this Court but, rather, shall be subject to challenge under R.C. 119 and Chapter 3745 and will only be subject to the original exclusive jurisdiction of the Environmental Review Appeals Commission and not this Court.

#### **XV. RETENTION OF JURISDICTION**

51. The Court will retain jurisdiction of this action for the purpose of enforcing Defendant's compliance with this Consent Order.

#### **XVI. COURT COSTS**

52. Defendant is hereby ordered to pay the costs of this action.

#### **XVII. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

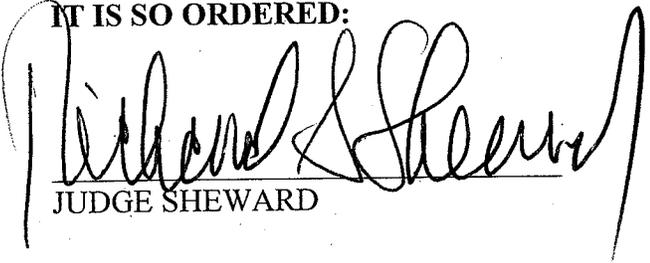
53. Each signatory for Defendant represents and warrants that he/she has been duly authorized to sign this document and to so bind Defendant to all terms and conditions thereof.

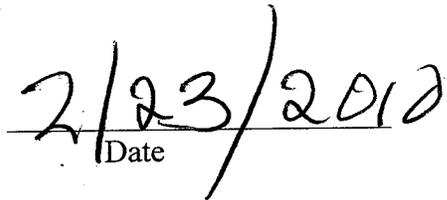
**XVIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

54. The Parties agree and acknowledge that final approval by the Plaintiff and Defendant, and entry of this Consent Order is subject to the requirement of 40 Code of Federal Regulations Section 123.27(d)(2)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. The Plaintiff and Defendant reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice within 30 days of receipt of a bill or notice from the Director.

55. Upon the signing of this Consent Order by the Court, the Clerk is hereby directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the Clerk is hereby directed to serve notice of the judgment upon all parties, 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, which date shall be the effective date as defined and used herein.

**IT IS SO ORDERED:**

  
JUDGE SHEWARD

  
Date

APPROVED:

RICHARD CORDRAY  
OHIO ATTORNEY GENERAL

 2-11-2010  
LAUREN C. ANGELL (0042615)

Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
Telephone: 614-466-2766  
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*Counsel for Plaintiff*



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*Counsel for Defendants*

By:



Authorized Representative of Defendants

