UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	
and	
THE STATE OF OHIO,	
Plaintiffs,	**Civil Action No.:** 1:09-cv-11 (L) 1:09-cv-12 consol.
v.	**Judge:** Michael R. Barrett
CITY OF IRONTON, OHIO,	
Defendant.	

CONSENT DECREE

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Appendix C:	2004 Ohio Environmental Protection Agency Authorization to Discharge under the National Pollutant Discharge Elimination System (NPDES) Permit
Appendix D:	Long Term Control Plan - Separation of Combined Sewers

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Defendant.	)	

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 Ironton, Ohio ("Ironton"), seeking injunctive relief and civil penalties, and alleging, inter alia, that Ironton 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 Permit ("NPDES Permit") issued to Ironton pursuant to the CWA relating to the municipal wastewater treatment plant and collection system owned and operated by Ironton;

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

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

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

WHEREAS, the United States, the State of Ohio, and Ironton ("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;

WHEREAS, Ironton is a municipal corporation located in Lawrence County, Ohio, and is organized and existing under the laws of the State of Ohio. Ironton owns, operates, and maintains a publicly owned treatment works ("POTW") which includes a treatment plant known as the Ironton Wastewater Treatment Plant ("WWTP") and a collection system ("Collection System") which collects stormwater and wastewater from residential, commercial and industrial sources for the purpose of transporting that wastewater to the WWTP. The WWTP and Collection System are authorized to discharge pollutants in accordance with Ironton's NPDES Permit into the Ohio River;

WHEREAS, the United States brings its claims pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. In its complaint, the United States seeks the imposition of civil penalties and injunctive relief against Ironton for alleged violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and terms and conditions of the NPDES Permit issued by the Ohio Environmental

Protection Agency ("Ohio EPA") as Ohio EPA Permit No. OPD00007*GD in 2002, as modified in 2004, and Ohio EPA Permit No. OPD00007*JD.

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 this 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. Ironton 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 Ironton, 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, Ironton 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. Ironton shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Ironton shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

4. Effective from the date of lodging of this Decree until its termination, in the event that Ironton transfers any ownership or operation of its WWTP, the Collection System, or any portion of the WWTP or Collection System, and includes in such transfer the transfer of any obligations under this Consent Decree, Ironton 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. Ironton will condition any transfer, in whole or in part, of ownership, operation, or other interest in its WWTP, the Collection System, or any other portion of the Ironton WWTP and/or Collection System, upon the successful execution of the terms and conditions of this Decree. Simultaneously with such notice, Ironton will provide written notice of such transfer to the United States and the State of Ohio as provided in Section XVII (Notices and Submissions). In the event of any such transfer of ownership or other interest, Ironton 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 the State of Ohio have agreed to release Ironton from the obligations and liabilities; (iii) the United States, the State of 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 this Consent Decree for Ironton to take all measures, consistent with 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, necessary to achieve full compliance with the CWA, the regulations promulgated thereunder, the State of Ohio water pollution control laws, and Ironton's NPDES Permit. It is the goal of the Parties that the work implemented by Ironton under this Consent Decree result in the elimination of all Combined Sewer Overflows in Ironton's sewer system and obtain the complete separation of Ironton's combined sewer system so that all sewage and other wastewater is conveyed to Ironton's treatment plant. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Ironton to come into and remain in full compliance with the terms and conditions of Ironton's NPDES Permit, the Clean Water Act, Chapter 6111 of the Ohio Revised Code, and to meet the objectives of U.S. EPA's April 19, 1994 "Combined Sewer Overflow (CSO) Policy," as these terms are defined in Paragraph 6 of this Consent Decree.

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 Ironton's NPDES Permit and any successor permits. The following definitions shall apply to the terms used in the Consent Decree:

a. "Building/Private Property Backup" shall mean a wastewater release or backup into a building or private property that is caused by blockages, flow conditions, or other malfunctions of the Collection System. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a Private Lateral is not a Building/Private Property Backup.

b. "Clean Water Act" or "CWA" shall mean the Federal Water Pollution Prevention And Control Act found at 33 U.S.C. § 1251 et seq., and the regulations promulgated thereunder.

c. "Collection System" shall mean the municipal wastewater collection and transmission system owned or operated by Ironton including all pipes, interceptors, force mains, gravity sewer lines, lift stations, pumping stations, manholes and appurtenances thereto designed to collect and convey municipal sewage (domestic, commercial, and industrial) to Ironton's WWTP or to a Combined Sewer Overflow Outfall. "Collection System" includes both the "Combined Sewer System" and the "Sanitary Sewer System."

d. "Combined Sewer Overflow Policy" or "CSO Policy" shall mean the policy issued by U.S. EPA regarding combined sewer overflows, entitled "Combined Sewer Overflow (CSO) Policy," 59 Fed.Reg. 18,688 (April 19, 1994).

e. "Combined Sewer System" shall mean the portion of Ironton's Collection System designed to convey municipal sewage (domestic, commercial and industrial wastewaters) and stormwater to the WWTP or to a Combined Sewer Overflow ("CSO") Outfall.

f. "Consent Decree" or "Decree" shall mean this Decree, all Appendices hereto, and all plans, schedules, reports, memoranda, or other submittals approved by U.S. EPA pursuant to the requirements of this Decree or any Appendix hereto. In the event of any conflict between the Decree and any Appendix, this Decree shall control.

g. "Combined Sewer Overflow" or "CSO" shall mean any discharge from Ironton's Combined Sewer System at a CSO Outfall designated in the permit including Outfalls 004, 007, 008, 009, 010, 011, 017, or 018 as more particularly described in its NPDES Permit.

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

i. Nash and 1st Street CSO (Outfall 004);

ii. Hecla Street CSO (Outfall 007);

iii. Etna Street CSO (Outfall 008);

iv. Walnut Street CSO (Outfall 009);

v. Mastin and 5 ½ Alley CSO (Outfall 010);

vi. North Fifth Street CSO (Outfall 011);

vii. Mill Street South of 4th Street CSO (Outfall 017); and

viii. Orchard Street CSO (Outfall 018).

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 Southern 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 Southern 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 Ironton, Ironton 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 Overflow" or "DWO" shall mean a discharge that occurs at a permitted CSO Outfall when Ironton's Collection System is not receiving precipitation-related inflow or infiltration.

m. "Ironton" shall mean the defendant City of Ironton, Ohio.

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

o. "Infiltration" shall mean water entering the Collection System and service connections 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.

p. "Inflow" shall mean water introduced into the Collection System, including service connections, 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 other wet areas, cracked or broken manhole covers, cross connections from separate storm sewers, catch basins, storm water, surface run-off, street wash waters, and drainage.

q. "Long Term Control Plan" or "LTCP" shall mean the sewer separation plan that Ironton develops pursuant to Part I.C.A. of its NPDES Permit and Section V of this Consent Decree.

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

s. "Nine Minimum Controls" or "NMCs" shall mean those controls identified in Section II.B. of U.S. EPA's April 19, 1994, Combined Sewer Overflow (CSO) Control Policy.

t. "NPDES Permit" shall mean Ohio EPA Permit No. OPD00007*JD issued to Ironton by Ohio EPA, effective August 1, 2007, and Ohio EPA Permit No. OPD00007*HD issued to Ironton of Ironton by Ohio EPA, effective on July 1, 2002, including those modifications effective June 1, 2004; the NPDES Permits and modifications to it are attached hereto as Appendix A, Appendix B, and Appendix C, respectively.

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 Ironton.

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

y. "Private Lateral" shall mean that portion of the Collection System not owned by Ironton and used to convey wastewater from a building(s) to a portion of the Collection System owned by Ironton.

z. "Prohibited Bypass" shall mean a bypass as defined by 40 C.F.R. § 122.41(m)(4).

aa. "Sanitary Sewer System" shall mean the separate portion of the Collection System Sewer designed to convey municipal sewage (domestic, commercial, and industrial wastewater) to the WWTP.

bb. "Sanitary Sewer Overflow" or "SSO" shall mean an overflow, spill, diversion, or release of wastewater from or caused by the separate portions of Ironton's Collection System. This term shall include: (i) discharges to waters of the State or United States from the Ironton's Collection System and (ii) any release of wastewater from Ironton's Collection System to public or private property that does not reach waters of the United States or the State of Ohio, including Building/Private Property Backups.

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

dd. "Semi-annual Progress Report" shall mean the reports due on a semi-annual basis under Section VII of this Consent Decree.

ee. "Sensitive Areas" shall mean those areas designated by the NPDES authority in coordination with state and federal agencies, as appropriate, Outstanding National Resource Waters, National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters with primary contact recreation, public drinking water intakes or their designated protection areas, and shellfish beds, as set forth in Section II.C.3. of the CSO Policy.

ff. "Six-month Period" shall mean a six-month period ending on June 30 or December 31.

gg. "Unpermitted Discharge" shall mean any discharge from the combined portions of Ironton's Collection System at other than a CSO Outfall designated in the permit including Outfalls 004, 007, 008, 009, 010, 011, 017, or 018 as more particularly described in its NPDES Permit.

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

ii. "Waste Water Treatment Plant" or "WWTP" shall mean the waste water treatment plant owned and operated by Ironton of Ironton and located at 810 North Fourth Street, Ironton, Ohio, Lawrence County.

V. PERMANENT INJUNCTION AND COMPLIANCE MEASURES

A. PERMANENT INJUNCTION

7. Ironton shall achieve and maintain full compliance with the terms and conditions of its NPDES Permit and the provisions of the Act, 33 U.S.C. § 1281 et seq., and Ohio Revised Code Chapter 6111, and the rules promulgated thereunder and with the compliance program and the schedules set forth below.

B. NINE MINIMUM CONTROLS

8. As of the date of lodging of this Decree, Ironton has implemented the Nine Minimum Controls as described in the report entitled "City of Ironton, Ohio Combined Sewer Overflow Long Term Control Plan: Nine Minimum Controls, April 2007," and set forth in Section II.B. of the CSO Policy, which include the following:

a. Proper operation and regular maintenance programs for sewer systems and CSOs;

b. Maximum use of collection system for storage;

c. Review and modification of pretreatment requirement to assure CSO impacts are minimized;

d. Maximization of flow to the POTW for treatment;

e. Prohibition of CSOs during dry weather;

f. Control of solid and floatable materials in CSOs;

g. Pollution prevention;

h. Public notification to ensure that the public receives adequate notification of CSO occurrences and SCO impacts;

i. Monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.

The "City of Ironton, Ohio Combined Sewer Overflow Long Term Control Plan: Nine Minimum Controls, April 2007" is hereby incorporated by reference as an enforceable provision of this Decree.

C. LONG-TERM CONTROL PLAN - COMBINED SEWERS SEPARATION

9. Ironton shall undertake CSO controls in the form of complete separation of its Combined Sewer System. Ironton shall effect the complete separation of its Combined Sewer System in five phases as more fully set forth in Appendix D. All five phases of the sewer separation project shall be completed by December 31, 2026 or 18 years following the Date of Entry of this Consent Decree, whichever is later.

D. ELIMINATION/REDUCTION OF INFLOW AND INFILTRATION

10. Sixty (60) days after the lodging of this Consent Decree, Ironton will submit to EPA for approval a plan for an ongoing program to identify and eliminate sources of Inflow and Infiltration into the Sanitary Sewer System with the goal of eliminating excessive Inflow and Infiltration in accordance with 40 C.F.R. § 35.2005(b)(16). Ironton's plan must evaluate the following measures in the development of this program: identification and elimination of roof leaders and downspout connections leading to the Sanitary Sewer System; redirection of area and foundation drains and basement sump pumps; and elimination of unauthorized and/or illegal cross connections. Following EPA approval of the plan, Ironton shall implement the plan in accordance with its provisions. Commencing with the first Semi-annual Progress Report date following the Date of Entry, but no sooner than six months following the Date of Entry, Ironton will describe the steps it has taken and will take in compliance with the provisions of this Paragraph.

E. INVESTIGATION OF CAUSES OF NON-COMPLIANCE

11. Beginning sixty (60) days from the Date of Entry, Ironton shall provide to U.S. EPA and Ohio EPA a report on its procedures for investigating Dry Weather Overflows ("DWOs").

12. All DWOs from CSO outfalls are prohibited. Ironton must report all DWOs to Ohio EPA by telephone at (800) 282-9378 within twenty-four (24) hours of when it becomes aware of the DWO.

13. Should Ironton detect a DWO, Ironton shall begin corrective action immediately. Ironton shall inspect the DWO each subsequent day until the overflow has been eliminated. Ironton must submit to U.S. EPA and Ohio EPA a written report within five days of becoming aware of the DWO. The written report must include the following information:

a. Date and time that Ironton became aware of the DWO;

b. Estimated date and time when the DWO began and stopped;

c. CSO Outfall from which DWO originated;

d. Estimated volume of DWO;

e. Cause or suspected cause of the DWO;

f. Response measures taken to eliminate the DWO;

g. Response measures taken to eliminate future DWOs;

h. Measures to be taken to prevent recurrence of the DWO and a schedule for the implementation of such measures.

14. Ironton shall summarize all such DWOs in the Semi-Annual Progress Report required under Section VII of this Consent Decree. Nothing in this Section shall eliminate or minimize any additional notification or reporting required by the NPDES Permit.

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

16. Immediately upon the Date of Lodging of this Consent Decree, Ironton will comply with all final effluent limits set forth in its NPDES Permit.

VI. REVIEW AND APPROVAL OF SUBMITTALS

17. Ironton shall provide Ohio EPA with a copy of each plan, report, schedule, or other document submitted by Ironton for U.S. EPA approval. For each plan report, schedule or other document submitted by Ironton for U.S. EPA approval, U.S. EPA, after providing Ohio EPA with reasonable opportunity for consultation, may (a) approve the submittal, in whole or in part; (b) disapprove the submittal, in whole or in part; (c) approve the submittal upon specified conditions, directing Ironton to modify its submission; or (d) any combination of the above. U.S. EPA shall use its best efforts to respond to the documents submitted by the City as expeditiously as possible. If U.S. EPA approves the submittal, U.S. EPA shall notify Ironton in writing. If the submittal is disapproved in whole or in part, or approved with conditions, U.S. EPA shall describe the deficiencies or conditions in writing so that Ironton can make the required modifications and Ironton shall provide U.S. EPA and Ohio EPA with a modified submittal in accordance with U.S. EPA's directives. Ironton may request a meeting with U.S. EPA to discuss the deficiencies, but no such request or meeting shall extend any deadlines set forth in this Section.

18. Within sixty (60) days following receipt of any notice from U.S. EPA disapproving a submittal or directing modification of a submittal pursuant to the preceding paragraph (or within such longer time set forth in the notice or agreed to by the parties), Ironton

shall submit a modified submittal to U.S. EPA for approval, subject only to Ironton's right to invoke the dispute resolution procedures set forth in Section XX. The modified submittal shall correct any deficiencies identified by U.S. EPA, and conform with any directions set forth in the notice provided pursuant to the preceding paragraph. If Ironton fails to submit a modified document to U.S. EPA within the 60-day period, U.S. EPA retains the right to modify or develop any disapproved or conditionally approved portion of the submittal. Ironton shall implement any such plan, report, schedule or other submittal as modified or developed by U.S. EPA, subject only to Ironton's right to invoke the dispute resolution procedures set forth in Section XX.

19. In the event that a resubmitted plan, report, schedule or other document or portion thereof is disapproved in whole or in part or approved with conditions by U.S. EPA, U.S. EPA shall provide Ironton with a written notice describing remaining deficiencies or conditions for approval. U.S. EPA may require Ironton to correct the deficiencies or satisfy the conditions for approval of the submittal within a specified time frame, or U.S. EPA may modify or develop any disapproved or conditionally approved portion of the submittal. Ironton may request a meeting with U.S. EPA to discuss the deficiencies, but no such request or meeting shall extend any deadlines set forth in this Section. Following receipt of a notice requiring Ironton to correct deficiencies or satisfy conditions for approval, Ironton shall submit a modified document in accordance with U.S. EPA's directions, subject only to Ironton's right to invoke the dispute resolution procedures set forth in Section XX.

20. Notwithstanding the receipt of a notice of disapproval pursuant to paragraph 17, 18 or 19, above, Ironton shall proceed, if directed by U.S. EPA, to take any action required by any non-deficient portion of Ironton's submission, if such action can be undertaken independent

of the deficient portion of Ironton's submission. Implementation of any non-deficient portion of a submission shall not relieve Ironton of any liability for stipulated penalties under Section X.

21. All plans and studies submitted pursuant to this Consent Decree shall be incorporated herein as part of this Consent Decree upon submission and approval by U.S. EPA.

22. Ironton shall undertake the plans and studies submitted pursuant to this Consent Decree in good faith with the intent of effectively evaluating the matters addressed by the plan or study.

23. Ironton's City Council will take all lawful and appropriate actions to facilitate the implementation of this Consent Decree, including prompt review and approval of any bids, contracts, or other documents, and, if applicable, prompt review and approval of any schedule of work necessary to maintain compliance with this Consent Decree.

VII. REPORTING

A. REPORTS

24. On a semi-annual basis on January 31 and July 31, for each Six-month Period commencing with the first full six-month period after Entry of this Consent Decree and continuing until termination, Ironton will submit to U.S. EPA and Ohio EPA a progress report ("Semi-annual Progress Report") regarding the implementation of the requirements of this Decree in the previous Six-month Period. The Semi-Annual Progress Report will include at a minimum:

a. A statement setting forth the deadlines and other terms that Ironton is required by this Consent Decree to meet since the date of the last Semi-annual Progress Report, whether and to what extent Ironton has met these requirements, and the reasons for any noncompliance;

b. A general description of the work completed within the Six-month Period, and a projection of work to be performed pursuant to this Consent Decree during the next or succeeding Six-month Period. Notification to U.S. EPA and Ohio EPA of any anticipated delay shall not, by itself, excuse the delay;

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; and,

e. A summary of all CSOs, SSOs and other unpermitted discharges occurring within the Six-month Period including the actual or estimated frequency, duration, and volume of each CSO, SSO, and other unpermitted discharges.

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

B. CERTIFICATION AND ADMISSIBILITY

26. Any report or plan relating to monitoring data or any representation made by Ironton as to its compliance with this Decree that Ironton is required by this Consent Decree to submit, including reports, plans or other submissions that Ironton is also required to submit by its NPDES Permit, shall be signed by an official or authorized agent of Ironton and shall include the following certification:

> I certify under penalty of law that the document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and

> complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

27. Ironton shall not object to the admissibility into evidence of any report, plan, or other submission prepared in accordance with Paragraph 26, or the information contained in said reports, in any proceeding to enforce this Consent Decree.

VIII. FUNDING

28. Compliance with the terms of this Consent Decree by Ironton is not conditioned on the receipt of federal or state grant or loan funds or upon Ironton's financial capabilities. In addition, Ironton's 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, or by Ironton's financial capabilities.

IX. CIVIL PENALTY

29. Ironton shall pay a civil penalty of $49,000 to the United States within 30 days following entry of this Consent Decree. Payment to the United States shall be made via FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Ohio, 303 Marconi Boulevard - Suite 200, Columbus, OH 43215, (614) 469.5715. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. City of Ironton, and shall reference the civil action number and DOJ case number 90-5-1-1-08729, to the United States in accordance with

Section XVII of this Decree, Notices and Submissions, by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

30. No later than thirty (30) Days following entry of this Decree, Ironton shall pay a civil penalty in the amount of $49,000 to the State of Ohio. Payment will be made by cashier's check or certified funds, payable to "Treasurer, State of Ohio," and will be sent to:

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

31. Payment may also be made by electronic funds transfer to the designated accounts pursuant to instructions sent by the State of Ohio upon request by Ironton. 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 XVII, Notices and Submissions.

32. Ironton 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. Ironton will pay interest on any unpaid balance of the civil penalty owed to the State of Ohio, which will begin to accrue at the end of the 30-day period described above, at the rate of interest provided for pursuant to Ohio Revised Code § 1343.03.

33. 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.

X. STIPULATED PENALTIES

34. Ironton will pay to the United States and the State of Ohio stipulated penalties in the amounts set forth in this Section for failure to comply with the requirements of this Consent Decree specified below unless excused by a Force Majeure event as established in Section XVIII and XIX. "Compliance" by Ironton with any specified requirement of this Consent Decree shall include satisfactory completion of all activities, and satisfaction of any conditions, necessary to fully implement the specified requirement, within any time schedules and deadlines established by and approved by U.S. EPA under this Consent Decree with respect to such requirement.

35. For each failure to comply with any deadline for completion of construction or for achievement of full operation set forth in the implementation schedule developed and approved pursuant to paragraph 9 of Section V, and attached hereto in Appendix D, Ironton shall pay the following stipulated penalties to the Plaintiffs per violation per day:

Period of Noncompliance	Penalty per Day per Violation
Days 1-30	$ 200
Days 31-60	$ 300
Days 61-90	$ 400
Days 91 and over	$ 600

36. For each failure to implement the Nine Minimum Controls pursuant to paragraph 8 of Section V, Ironton shall pay the following stipulated penalties to the Plaintiffs per violation per day:

Period of Noncompliance	Penalty per Day per Violation
Days 1-30	$ 200
Days 31-60	$ 300
Days 61-90	$ 400
Days 91 and over	$ 600

37. For each failure to submit a timely and adequate plan, report, schedule or other submission identified in Section V, Section VII and/or Appendix D, Ironton shall pay the following stipulated penalties to the Plaintiffs per violation per day:

Period of Noncompliance	Penalty per Day per Violation
Days 1-30	$ 200
Days 31-60	$ 400
Days 61and over	$ 600

38. For each failure to allow access to the Ironton WWTP in accordance with Section XV, below, Ironton shall pay the following stipulated penalties to the Plaintiffs per day:

Period of Noncompliance	Penalty per Day per Violation
Days 1-30	$ 400
Days 31-60	$ 600
Days 61 and over	$ 900

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

40. 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 Ironton'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 Ironton previously has paid a stipulated penalty, the amount of the statutory penalty will be reduced by the amount of the stipulated penalty previously paid.

41. The payment of stipulated penalties will not be construed so as to relieve Ironton 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.

42. 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 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.

43. 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 the State of 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 provided for by Ohio Revised Code § 1343.03.

44. Any interest owed or stipulated penalties incurred by Ironton 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 2005VO02248, DOJ Case Number 90-5-1-1-08729, and the civil action case number and case name of this action assigned to this matter by the United States District Court for the Southern 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 XVII, Notices and Submissions.

45. Any interest owed or stipulated penalties incurred by Ironton 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:

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

46. 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, Ironton 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, Ironton will pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties 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 Ironton to the extent that it prevails.

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

XI. EFFECT OF SETTLEMENT

48. This 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. Nothing in this Consent Decree is intended to nor shall be construed to operate in any way to resolve any criminal liability of Ironton.

49. This Consent Decree in no way affects or relieves Ironton 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. This Consent Decree in no way affects or relieves Ironton of its responsibility to comply with any federal, state, or local law, regulation, or permit.

50. The Parties agree that Ironton 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.

51. The United States and the State of Ohio expressly reserve all remedies available to them for all violations of the CWA not specifically addressed by Paragraph 48 of this Consent Decree.

52. 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 Ironton, in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

53. 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.

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

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

56. 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 Ironton or to seek access to the property of Ironton.

XII. NOT A PERMIT

57. 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 Ironton 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.

58. Nothing herein will be construed as relieving Ironton 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.

59. This Consent Decree does not authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system.

60. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Notwithstanding any U.S. EPA review that may occur, Ironton shall remain solely responsible for its compliance with the terms of the Consent Decree and all applicable laws,

regulations and permits. This Consent Decree does not relieve Ironton of any obligation to apply for, obtain, and comply with the requirements of any new or existing NPDES Permit or to comply with any federal, state or local laws or regulations, including Permits to Install and/or plan approvals from Ohio EPA.

XIII. FAILURE OF COMPLIANCE

61. The United States and the State of Ohio do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Ironton'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 Ironton's NPDES Permit or any future modifications or renewals thereof. 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, Ironton 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 Ironton's duties and obligations as set forth in this Consent Decree.

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

XIV. CONTINGENT LIABILITY OF THE STATE OF OHIO

63. The State of Ohio is a party plaintiff hereto pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e). The State of 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 the State of Ohio prevent Ironton 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 the State of Ohio do not prevent Ironton from raising revenues needed to comply with this Consent Decree.

XV. RIGHT OF ENTRY

64. U.S. EPA and Ohio EPA, and their representatives, contractors, consultants, and attorneys will have the right of entry into and upon Ironton'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 Ironton or its consultants;

d. Inspecting and evaluating any portions of Ironton's WWTP and Sewer System;

e. Inspecting and reviewing any records required to be kept under the terms and conditions of the Consent Decree, Ironton's NPDES Permit, any future modifications or renewals thereof, and the CWA;

f. Otherwise assessing Ironton's compliance with this Consent Decree.

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

XVI. RECORD RETENTION

66. Ironton 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 Ironton's NPDES Permit for a period of one (1) year from date of termination of this Consent Decree, unless a longer period is required by Ironton's NPDES Permit. Ironton will require any independent contractor implementing any portion of this Consent Decree to also retain such materials for a period of one (1) year from date of termination of this Consent Decree, unless a longer period is required by Ironton's NPDES Permit. Ironton will submit such supporting documents to U.S. EPA and/or Ohio EPA upon request. Following the retention periods described above, Ironton 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.

XVII. NOTICES AND SUBMISSIONS

67. Except as specified otherwise, when written notification (including all reports) or communication with the United States, U.S. EPA, the United States Department of Justice, the United States' Attorney for the Southern District of Ohio, the State of Ohio, Ohio EPA, and Ironton 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. 90-5-1-1-08729

As to Region 5 of U.S. EPA:

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

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

As to the State of Ohio:

Southeast District Office
Division of Surface Water
Attn: Enforcement Group Leader
Ohio Environmental Protection Agency
2195 Front Street
Logan, Ohio 45402-2911

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

As to Ironton
Mayor, City of Ironton
Ironton City Center
301 S. Third Street
P.O. Box 704
Ironton, OH 45638

David J. Schmitt
Cors & Bassett, LLC
537 East Pete Rose Way
Suite 400
Cincinnati, Ohio 45202
Attorney for the City of Ironton

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

XVIII. FORCE MAJEURE BETWEEN THE UNITED STATES AND IRONTON

69. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of Ironton or the control of any entity controlled by Ironton, 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/or 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 Ironton to approve contracts, will not, in any event, be considered Force Majeure events.

70. When Ironton 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, Ironton will notify U.S. EPA, in writing, within ten (10) days after Ironton first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice will indicate whether Ironton claims that the delay should be excused due to a Force Majeure event. The notice will describe in detail the basis for Ironton'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. Ironton 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 Ironton's right to obtain an extension of time for its obligations based on such event. The notice shall describe in detail the bases for Ironton's contention that it experienced a Force Majeure event, the precise cause or causes of the event, and the timetable by which those measures will be implemented. Failure to so notify U.S. EPA shall constitute a waiver of any claim of Force Majeure as to the event in question.

71. 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 XX, Dispute Resolution, will apply, and Ironton 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.

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

XIX. FORCE MAJEURE BETWEEN IRONTON AND THE STATE OF OHIO

73. If an event occurs which causes or may cause a delay in Ironton's compliance with any requirement of this Consent Decree, Ironton shall notify the Ohio EPA and the Ohio Attorney General's Office in writing within ten (10) days from when Ironton knew, or by the exercise of due diligence should have known, of the event. The notification to Ohio EPA and the Ohio Attorney General's Office shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, and the timetable by which those measures will be implemented. Ironton shall adopt all reasonable measures to avoid or minimize any such delay.

74. In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, Ironton may raise that they are entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such defense exists, it is, however, hereby agreed upon by Ironton and 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 court proceeding to enforce this Consent Decree is commenced by the State of Ohio. At that time, Ironton will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Ironton. Unless associated with a Force Majeure event as established in Section XIX of this Consent Decree, unanticipated or increased costs associated with the implementation of any action required by this Consent Decree, or a change in Ironton's financial circumstances, shall not constitute circumstances entirely beyond the control of Ironton or serve as a basis for an extension of time under this Consent Decree. Failure by

Ironton to timely comply with the notice requirements of this Section shall render this Section null and void and of no force and effect as to the particular incident involved and shall constitute a waiver of Ironton's rights to request an extension of its obligations under this Consent Decree based on such incident. An extension of one date based on a particular incident does not mean that Ironton qualify for an extension of a subsequent date or dates. Ironton must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Decree without a Force Majeure Clause does not constitute a waiver by Ironton of any rights or defenses they may have under applicable law.

XX. DISPUTE RESOLUTION

75. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Ironton that have not been disputed in accordance with this Section.

76. Any dispute that arises between Ironton 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 Ironton 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 Ironton and Plaintiffs are unable to agree upon the meaning or application of the requirements of this Consent Decree, then Ironton will comply with the position taken by Plaintiffs, subject only to Ironton's right to

petition the Court as set forth in Paragraph 77, 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).

77. Within forty-five (45) days of the end of the informal negotiations period for resolution of the dispute set forth in Paragraph 76 above, Ironton 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, Ironton shall have the burden of establishing that the position of the United States is arbitrary and capricious, or otherwise not in accordance with applicable law.

78. Except as provided in this Consent Decree, agreed to in writing by the parties, or ordered by the Court, the filing of a petition asking the Court to resolve a dispute will not in and of itself extend or postpone any obligation of Ironton 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 except as provided in Paragraph 46. In the event that Ironton does not prevail on the disputed issue, stipulated penalties, if applicable and demanded, will be assessed and paid as provided in Section X, Stipulated Penalties. For any dispute which may arise out of a disapproval in whole or in part or an approval with conditions by U.S. EPA of Ironton's Long Term Control Plan plans, reports, studies or other documents submitted in accordance with Section V, stipulated penalties shall not accrue during the period, if any, beginning on the 31st

day after the Court's receipt of the Plaintiffs' response, as set forth in Paragraph 77, above, regarding the dispute until the date that the Court issues a final decision regarding such dispute. The preceding sentence shall not apply if Ironton did not have a reasonable basis for the dispute or if the Petition was filed for the purpose of delay.

XXI. RETENTION OF JURISDICTION

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

XXII. MODIFICATION

80. Except as specifically provided for herein, there shall be no modifications or amendments of this Consent Decree without written agreement of the Parties to this Consent Decree. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by this Court. Changes to the interim deadlines initially set forth in the Appendix D hereto are considered non-material changes that may be made without approval by the Court, upon written agreement between the Parties.

81. Any disputes concerning modification of this Decree, shall be resolved pursuant to Section XX of this Decree, Dispute Resolution, provided, however, that, instead of the burden

of proof provided by Paragraph 77, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XXIII. TERMINATION

82. Two years after the City of Ironton has completed all construction required by its approved Long Term Control Plan, Ironton may seek, in writing, approval from United States and the State of Ohio to terminate 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 Ironton's fully-implemented Long Term Control Plan, Ironton 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 Ironton has complied with all other requirements of this Decree. If either the United States or the State of Ohio objects to the certification by Ironton, the matter will be subject to Section XX, Dispute Resolution and, if judicial action is required, Section XXI, Retention of Jurisdiction, of this Consent Decree. In such case, Ironton will bear the burden of proving that this Consent Decree should be terminated.

XXIV. FINAL JUDGMENT

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

XXV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

84. 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. Ironton 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 Ironton hereby consents to the entry of this Decree without further notice.

XXVI. SIGNATORIES

85. 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.

XXVII. EFFECTIVE DATE

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

XXVIII. COSTS OF SUIT

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

SO ORDERED THIS 17th DAY OF March, ~~XXXX~~ 2009

s/ Judge Michael R. Barrett

United States District Judge

FOR THE UNITED STATES OF AMERICA

DATE: 10/24/08

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

DATE: 10/25/08

KRISTIN M. FURRIE
Enforcement Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

Gregory G. Lockhart by DW AUSA

DATE: Jan 6, 2009

GREGORY G. LOCKHART
United States Attorney
Southern District of Ohio
303 Marconi Boulevard - Suite 200
Columbus, Ohio 43215
(614) 469-5715

Donetta D. Wiethe

DATE: Jan. 6, 2009

DONETTA D. WIETHE
Assistant United States Attorney
Southern District of Ohio
221 East Forth Street - Suite 400
Cincinnati, Ohio 45202
(513) 684-3711

DATE: 12/23/08

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

DATE: 12/19/08

STEVEN P. KAISER
Associate Regional Counsel
United States Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
(312) 353-3804

DATE: 8/15/08

MARK POLLINS
Director
Water Enforcement Division
Office of Civil Enforcement
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

FOR THE STATE OF OHIO

THE STATE OF OHIO
ex rel. NANCY ROGERS
Attorney General of the
State of Ohio

BY: L Scott Helkowski DATE: 12/31/08

L. Scott Helkowski (0068622)
Assistant Attorney General
Environmental Enforcement Section
State Office Tower
30 E. Broad Street - 25th Floor
Columbus, Ohio 43215-3428

FOR THE CITY OF IRONTON, OHIO

By: _____ DATE: 12/18/08

Rich Blankenship
Mayor
City of Ironton, Ohio
Ironton City Building
301 South 3rd Street
Ironton, Ohio 45638