Griffith CD - JW Copy

FILED

97 JUN 19 AM 10:45

STEP[illegible] CLERK
FOR [illegible] DISTRICT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. THE SANITARY DISTRICT OF HAMMOND, a municipal corporation; THE CITY OF HAMMOND, a municipal corporation; THE TOWN OF MUNSTER, a municipal corporation; THE TOWN OF GRIFFITH, a municipal corporation; AMERICAN CHEMICAL SERVICE, INC.; AMERICAN MAIZE-PRODUCTS COMPANY; FERRO CORPORATION; LEVER BROTHERS COMPANY; PACKAGING CORPORATION OF AMERICA, → OUT Defendants, and THE STATE OF INDIANA, Statutory Defendant.	Civil Action 2:93 CV 225 JM

CONSENT DECREE

Plaintiff, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), filed a Complaint on August 2, 1993, alleging, inter alia, that the Town of Griffith, Indiana ("Town" or "Griffith"), has violated the Clean Water Act, 33 U.S.C. § 1251 et seq. ("CWA" or "the Act").

The State of Indiana ("State"), which is named as a defendant in the Complaint pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), filed cross claims against the Town on or about June 6, 1994. The State's cross claims alleged against the Town in this matter will be resolved by this Decree.

The United States, the State, and the Town have consented to the entry of this Decree without trial of any issues. Without admitting any of the allegations set forth in the Complaint, the United States, the State, and the Town hereby stipulate to the Court that in order to resolve the issues stated in the United States' Complaint and the State's cross claims with regard to the Town, this Consent Decree should be entered.

NOW THEREFORE, it is hereby ORDERED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and 28 U.S.C. § 1345. The United States' Complaint and the State's cross claims state claims against the Town under Section 309 of the Act, 33 U.S.C. § 1319. Venue lies in this District pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), 28 U.S.C. § 1319, and 28 U.S.C. § 1391.

II. BINDING EFFECT

2. The provisions of this Decree shall apply to and be binding upon the United States, the State, and the Town,

including the Town's officers, council members, directors, agents, and employees. No later than thirty days prior to the transfer, in whole or in part, of ownership, operation, or other interest in either the Griffith sewerage system, pump station, or any other property affected by this Decree, the Town shall give written notice of this Decree to any successors in interest. Upon transfer, in whole or in part, of ownership, operation, or other interest in the Griffith sewerage system, pump station, or any other property affected by this Decree, the Town shall provide a copy of this Decree to any successor in interest and to each consultant retained by the Town to perform or oversee performance of any activity required by this Decree. The Town shall condition the transfer, in whole or in part, of ownership, operation, or other interest, upon the successful execution of the terms and conditions of this Decree. The Town shall notify in writing EPA, the United States, the Indiana Department of Environmental Management ("IDEM"), and the State of Indiana of any successor in interest at least 30 days prior to any transfer.

III. OBJECTIVES

3. It is the express purpose of the parties in entering this Decree to further the objectives of the Clean Water Act, as enunciated at Section 101 of the Act, 33 U.S.C. § 1251. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Decree or resulting from

the activities required by this Decree shall have the objective of ensuring the Town's full compliance with the Clean Water Act.

IV. DEFINITIONS

4. Unless otherwise defined herein, terms used in this Decree shall have the meaning given to those terms in the Clean Water Act, 33 U.S.C. § 1251 et seq., and the regulations promulgated thereunder at 40 C.F.R. § 401.11.

V. PROHIBITION ON ILLEGAL DISCHARGES

5. The Town shall not discharge wastewater in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), including without limitation any discharges from the new Cline Avenue pump station to the Little Calumet River.

VI. REMEDIAL ACTIONS

DONE → 6. The Town, if it has not already done so, shall perform the following measures relating to the design and construction of a new pump station to be constructed at a location approximately 400 feet south of the current Cline Avenue pump station (the "new Cline Avenue pump station") as a replacement for the current Cline Avenue pump station:

done 10/10/95 (a) Not later than entry of this Decree (if it has not already done so), the Town shall apply for all necessary permits from all governmental agencies, whether federal, state, or local (with the exception of the Rule 5 erosion control permit, which shall be obtained by the contractor), for the construction and operation of the new Cline Avenue pump station. If the Town has not obtained said permits from all governmental agencies by the date of entry of this Decree for construction of the new Cline

Avenue pump station, the Town shall so notify EPA and IDEM by within 30 days of the date of entry of this Decree.

done 6/9/96 (b) Not later than December 31, 1996, the Town shall advertise and bid all necessary contracts for the construction of the new Cline Avenue pump station.

done 9/3/96 (c) Not later than March 15, 1997, the Town shall commence construction of the new Cline Avenue pump station.

done 8/18/97 (d) At least two weeks before the Town makes the new Cline Avenue pump station fully operational and takes the current Cline Avenue pump station out of service, the Town shall notify EPA and IDEM in writing of the date that the new Cline Avenue pump station will be fully operational and that the current Cline Avenue pump station will be taken out of service. The Town shall include in its notification to EPA and IDEM under this subparagraph (d) a step-by-step explanation of the procedures that the Town will employ in taking the current Cline Avenue pump station out of service and making the new Cline Avenue pump station fully operational, and how the transition will be made from the current Cline Avenue pump station to the new Cline Avenue pump station.

done 10/15/97 (e) Not later than August 31, 1998, the Town shall finish construction of the new Cline Avenue pump station, make the new Cline Avenue pump station fully operational, and take the current Cline Avenue pump station out of service.

done 10/16/97 (f) Within one week after making the new Cline Avenue pump station fully operational and taking the current Cline Avenue pump station out of service, the Town shall notify EPA and IDEM that the new Cline Avenue pump station is fully operational and that the current Cline Avenue pump station has been taken out of service.

done 2/5/98 (g) Not later than 120 days after the Town has made the new Cline Avenue pump station fully operational and has taken the current Cline Avenue pump station out of service, the Town shall submit to EPA and IDEM the as-built design plans of the new Cline Avenue pump station.

DONE → 7. The Town shall conduct the following measures to assure proper operation and maintenance of its current and new Cline Avenue pump stations:

OK (a) The Town shall operate and maintain its current Cline Avenue pump station in compliance with all applicable federal and state laws, including Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and with this Consent Decree.

6/17/97
8/29/97
done 10/18/05 (b) Not later than 60 days prior to the date on which the new Cline Avenue pump station is to become fully operational, the Town shall submit to EPA and IDEM for review and approval a draft operations and maintenance and emergency procedures plan for the new Cline Avenue pump station. The Town shall issue a final operations and maintenance and emergency procedures plan for the new Cline Avenue pump station within twenty-one days after receiving comments from EPA and IDEM on the draft plan. On or before the date on which the new pump station becomes fully operational, the Town shall display the approved operations and maintenance and emergency procedures plan at the pump station, and shall adequately train all personnel at the pump station to comply with the operations and maintenance and emergency procedures plan. Review and approval by EPA and IDEM of the operations and maintenance and emergency procedures plan pursuant to this Paragraph shall not act in any way to postpone the date on which the new pump station is to become fully operational.

DONE → 8. The Town shall conduct the following measures to assure that the sewage that the Town conveys to the Hammond Sanitary District ("the District") will not adversely affect the District's sewer system or wastewater treatment plant, or be a cause of any violation by the District of the CWA or the District's National Pollution Discharge Elimination System permit:

done 3/18/97 (a) By April 1, 1997, the Town will enact the local laws or ordinances necessary to give legal effect within Griffith to the District's pretreatment program (including, without limitation, the sewer use ordinance developed as part of the District's pretreatment program and any user permits issued by the District pursuant to the pretreatment program), which has been approved by EPA pursuant to 40 C.F.R. Part 403. The Town will continue to update its laws and ordinances as necessary to give legal effect within Griffith to any modifications to the pretreatment program made by the District and approved pursuant to 40 C.F.R. Part 403.

done 3/18/97 (b) By April 1, 1997, the Town will enact the local laws or ordinances necessary to give the District, in addition to the Town, the legal authority to enforce the District's approved pretreatment program (including, without limitation, the sewer use ordinance developed as part of the District's pretreatment program and any user permits issued by the District pursuant to the pretreatment program) against dischargers to the Griffith

sewers who are located within the municipal boundaries of the Town of Griffith.

done 5/6/97 (c) The Town shall not discharge in excess of an instantaneous flow of 5.5 million gallons per day to the District, without first obtaining written or oral approval or agreement (if oral approval, to be confirmed subsequently in writing within 5 days) from the District.

N/A (d) Once the new Cline Avenue pump station is fully operational and the current Cline Avenue pump station has been taken out of service, the Town shall use its equalization basin to reduce flow to the District below 5.5 million gallons per day instantaneous flow if so requested by the District to assist the District in the proper operation of the District's collection system or wastewater treatment plant; but the Town need not comply with such a request by the District if, in the best professional judgment of the Town, such use of the Town's equalization basin will harm the Griffith sewer system or pump station or endanger public health.

DONE → 9. The Town shall conduct the following measures relating to passage of a new sewer use and sewer rate ordinance to supersede existing Griffith Ordinances:

done 3/28/97 (a) By no later than April 1, 1997, the Town shall submit to EPA and IDEM for review and approval a draft sewer use and sewer rate ordinance applicable to dischargers to the Griffith sewer system. The sewer use ordinance shall provide the Town with sufficient enforcement and regulatory authority to assure that the Town's sewer system and pump station operate in compliance with applicable federal and state law. In complying with this subparagraph, the Town may submit to EPA and IDEM a separate sewer use ordinance and sewer rate ordinance.

done 2/10/10 (b) Within 45 days after EPA and IDEM approve the draft sewer use and sewer rate ordinance(s) described in the preceding subparagraph, the Town shall enact the sewer use and sewer rate ordinance(s) into law.

done 10/18/05 (c) Within 60 days after receiving comments from EPA on the Town's previously submitted proposed financial management system, the Town shall submit to EPA and IDEM for review and approval a revised financial management system pursuant to Section VII of this Consent Decree.

done (d) Within 30 days after EPA approves the financial management system described in the preceding subparagraph, the Town shall complete implementation of the financial management system.

ONGOING

10. The Town shall conduct the following measures to reduce infiltration and inflow to the Town's sewer system:

ONGOING (a) Commencing immediately, the Town shall use its best efforts to identify and eliminate sources to the Griffith sanitary sewer system of illegal inflow, such as roof drains, yard drains, foundation drains, sump pumps, and sewer cross-connections. In the quarterly reports to be submitted pursuant to Section IX of this Decree, the Town shall report the sources of illegal inflow that the Town has identified, the measures that the Town has taken to eliminate such sources of illegal inflow, and a schedule, to be reviewed and approved by EPA and IDEM, for identifying and eliminating additional sources of illegal inflow. Actions taken pursuant to this subparagraph (a) shall in no way replace, alter, or excuse the Town's obligations to comply with the other provisions of this Consent Decree, including the obligation to complete the actions and work in the Sewer System Evaluation Study ("SSES") developed and finalized pursuant to this Paragraph 10 of the Consent Decree.

(b) Notwithstanding paragraph 12 of this Decree, EPA and IDEM shall review and approve or disapprove with modifications the revised draft SSES previously submitted by the Town within 60 days of the lodging of this Decree.

done 11/21/96 (c) Within 60 days from the day on which EPA and IDEM have completed their review of the revised draft SSES, the Town shall incorporate and/or respond to any comments provided by EPA and IDEM in regard to the revised draft SSES, and issue a second revised SSES. The second revised SSES, including the schedule for completion of any actions and work pursuant to the SSES, shall be incorporated into and made part of this Decree upon its approval by EPA and IDEM. The Town shall complete all actions and work in the second revised SSES according to the schedules in the second revised SSES.

ONGOING (d) Within 90 days after completing all actions and work in the second revised SSES according to the schedules in the second revised SSES, the Town shall submit to EPA and IDEM for review and approval a sewer system map that incorporates the information gathered during the preparation of the SSES and the completion of the actions and work pursuant to the SSES. The map shall include, among other things, both sanitary and storm sewers, pipe sizes throughout the system, manhole locations, distances between manholes, and invert and manhole casting elevations. The Town shall regularly update the map after December 31, 2001, to reflect any future changes or additions to the sewer system.

(e) Within 90 days after completing all actions and work in the second revised SSES according to the schedules in the

second revised SSES, the Town shall submit to EPA and IDEM for review and approval a report that sets forth ongoing, long-term procedures that will be followed by the Town with regard to the sewer system to prevent excessive I/I in the future and to operate and maintain the sewer system properly and in good condition. Such procedures shall include, but are not limited to, cleaning and inspecting with television cameras a specified percentage of the system sewer lines each year, testing and grouting of sewer line joints on a specified schedule, pipeline repairs and replacement, sliplining, and root removal. The report to be submitted pursuant to this subparagraph (e) shall also provide for future analyses of demands on the system and of the adequacy of sewer and force main pipe sizes in light of the anticipated demands on the system.

DONE → 11. The Town shall take any and all other measures necessary to achieve and remain in compliance with all applicable federal and state laws, including the CWA, 33 U.S.C. § 1251 et seq. Such measures shall include, but are not limited to, taking prompt enforcement actions against dischargers to the Town's sewer system whose discharges violate applicable law, and setting limitations on any dischargers within the Town whose discharges to the Town's sewer system may interfere with, disrupt, or otherwise adversely affect the operations of the Town's sewer system or pump station. In order to assess and control the impact on the Griffith sewer system and pump station of industrial dischargers within Griffith, the Town shall conduct an industrial survey as follows:

done 3/28/97 (a) By April 1, 1997, the Town shall evaluate the industrial survey questionnaires previously completed by the industries within the Town, and conduct any follow-up calls or plant visits necessary to supplement any incomplete or unclear information reported by the industries.

done 9/1/97 (b) By September 1, 1997, the Town shall submit to EPA, IDEM, and the District the industrial survey questionnaires referenced in the previous subparagraph, as well as any additional information collected pursuant to the previous subparagraph.

N/A (c) The Town shall use the lists, questionnaires, and other information submitted to EPA, IDEM, and the District pursuant to the preceding subparagraph to take any actions necessary or appropriate to prevent discharges to the Town's sewer system from interfering with, disrupting, or otherwise adversely affecting the operations of the Town's sewer system or pump station, and to ensure compliance by the Town with the Clean Water Act.

VII. SUBMISSIONS REQUIRING AGENCY APPROVAL

12. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA and IDEM shall make best efforts to act within 60 days to: (a) approve the submission, in whole or in part, or (b) disapprove the submission, in whole or in part, specifying the manner in which the Town must modify the submission. To the extent that the Town contends that the schedule for completing any of the actions required by this Decree are affected by EPA's and/or IDEM's failure to act within 60 days, the Town may seek relief in accordance with the Force Majeure provisions of Section XIV of this Decree.

13. If EPA and IDEM approve the submission, in whole or in part, pursuant to paragraph 13(a), above, the Town shall proceed to take any action required by the plan, report, or other item, as approved by EPA and IDEM, to the extent that the actions required by the approved portions of the submission can be completed independently of the actions in the disapproved portions of the submission. Performance of the actions specified in any approved portion of a submission shall not relieve the

Town of any liability for stipulated penalties for any disapproved portions of such submission.

14. Upon receipt of a notice of disapproval pursuant to paragraph 12(b), above, the Town, within 30 days, shall modify and resubmit the plan, report, or other item for approval by EPA and IDEM. Any stipulated penalties applicable to the submission, as provided in section X of this Decree, shall accrue during the 30-day period but shall not be payable unless the resubmission is disapproved due to a material defect, as provided in paragraph 16, below.

15. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA and/or IDEM, EPA and/or IDEM may again require the Town to modify the submission, in accordance with the Paragraphs 13-15, above.

16. If upon resubmission, a plan, report, or item is disapproved by EPA and/or IDEM due to a material defect as determined by EPA and/or IDEM, the Town shall be deemed to have failed to submit such plan, report, or item timely and adequately, unless the Town invokes the dispute resolution procedures set forth in section XV of this Decree and EPA's and/or IDEM's disapproval or determination of material defect is overturned pursuant to those provisions. The provisions of sections X and XV of this Decree shall govern the implementation of any actions required by this Decree or any submission, and of accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's and/or IDEM's disapproval or determination

of material defect is upheld, stipulated penalties shall accrue from the date on which the initial submission was originally required pursuant to Section VI of this Decree.

17. All plans, reports, and other items required to be submitted to EPA and/or IDEM under this Consent Decree shall, upon approval by EPA and/or IDEM, be enforceable under this Consent Decree. In the event EPA and/or IDEM approves a portion of a plan, report, or other item required to be submitted to EPA and/or IDEM under this Consent Decree, the approved portion shall be enforceable under this Consent Decree.

VIII. FUNDING

18. The Town's performance of the terms of this Decree is not conditioned on the receipt of any federal or state loan or grant funds.

IX. REPORTING

19. Beginning with the calendar quarter ending March 31, 1997, and continuing until all of the requirements of Section VI of this Decree have been satisfied, the Town shall submit in writing to EPA and to IDEM a quarterly report describing the status and progress of projects required to be performed under Section VI of this Decree, and a schedule for the work to be performed under Section VI of this Decree during the following twelve month period. Notification to EPA and IDEM pursuant to this section of any anticipated delay shall not excuse the delay.

20. The quarterly reports described in the preceding paragraph shall be submitted by the 15th day of the month immediately following the last month of each calendar quarter. The full report shall be made available for inspection by the public at the Town's offices. The Town shall, through a duly authorized representative of the Town having knowledge of the report's contents, sign and certify that the information contained in the report is true, accurate, and complete based on the Town's knowledge, information, and belief. The Town shall use the following certification:

> To the best of my knowledge, after reasonable inquiry, I certify that the information contained in or accompanying this submission is 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.

21. Within five days after the Town violates any aspect of this Decree or the CWA, 33 U.S.C. § 1251 et seq., or fails to meet one of the deadlines established by this Decree, the Town shall notify EPA and IDEM in writing of such failure, the reason(s) for the failure, and a plan for preventing such failure in the future. The Town shall notify IDEM in writing or orally prior to discharging any wastewater to the Little Calumet River or any other navigable water or tributary of a navigable water of the United States. Any notices provided pursuant to this section of any violations of law or any failures to comply with this Decree shall in no way excuse such failures or violations.

X. STIPULATED PENALTIES

22. If the Town fails to comply with any requirement set forth in this Decree, except as specified in Section XV below, including any reporting requirements, the Town shall pay stipulated penalties in the following amounts:

(a) $400 per day for each violation for the first 30 days of violation;

(b) $800 per day for each violation for days 31 through 90 of violation;

(c) $2000 per day for each violation for days 91 through 120 of violation;

(d) $4000 per day for each violation beyond the 120th day of violation.

23. If the Town discharges in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), the Town shall pay a stipulated penalty of $10,000 for each day of such discharge. However, the Town shall be exempt from paying a stipulated penalty pursuant to this paragraph of the Consent Decree for discharging to the Little Calumet River until the Town has made the new Cline Avenue pump station fully operational pursuant to paragraph 6(f) above. ↳ Done → 1997

24. Nothing in this Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Decree.

25. The stipulated penalties herein shall be in addition to, and shall in no way limit, other remedies or sanctions available to the United States and the State by reason of the

Town's failure to comply with the requirements of this Decree or the Clean Water Act.

26. Stipulated penalties are due by the 28th day of the month following the month in which the violations occurred. The Town shall pay 60 percent of each stipulated penalty to the United States and 40 percent to the State, each payment to be made by cashier's check. Stipulated penalties to the United States shall be made payable to "Treasurer of the United States," and delivered to the United States Attorney for the Northern District of Indiana, 1001 Main Street, Suite A, Dyer, Indiana, 46311. Stipulated penalties to the State shall be made payable to "Environmental Management Special Fund" and delivered to IDEM, P.O. Box 7060, Indianapolis, Indiana, 46206-7060. The Town shall enclose with all checks a letter identifying the case name, court, docket number, specific stipulated penalty provision involved, and a description of the violation(s) of this Decree for which the stipulated penalties are being tendered. The Town shall send copies of each letter and check to both EPA and IDEM.

XI. PENALTY FOR PAST VIOLATIONS

27. The Town shall pay a civil penalty to the United States in the amount of $79,200. Payment shall be made within sixty (60) days after the date of entry of this Decree by delivering a cashier's check in the sum stated above payable to "Treasurer of the United States" to the United States Attorney for the Northern District of Indiana, 1001 Main Street, Suite A, Dyer, Indiana,

46311. The check shall be accompanied by a letter stating that the payment is tendered in settlement of this action, identifying the case name, court, and docket number. The Town shall mail a copy of the check and the letter tendering such check to both EPA and IDEM.

28. The Town shall pay a civil penalty to the State in the amount of $52,800 in satisfaction of the civil claims for the Town's alleged violations of federal and state law as set forth in the State's cross claims in this matter. Payment shall be made within sixty (60) days after the date of entry of this Decree by delivering a cashier's check in the sum stated above payable to "Environmental Management Special Fund" to IDEM, P.O. Box 7060, Indianapolis, Indiana, 46206-7060. The check shall be accompanied by a letter stating that the payment is tendered in settlement of this action, identifying the case name, court, and docket number. The Town shall mail a copy of the check and the letter tendering such check to EPA.

XII. LATE PAYMENT CHARGE

29. Interest shall accrue on any amounts overdue to the United States under the terms of this Decree at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717, for any delinquent payment of a civil or stipulated penalty.

30. Interest shall accrue on any amounts overdue to the State under the terms of this Decree at the rate of six percent (6%) for any delinquent payment of a civil or stipulated penalty.

XIII. RIGHT OF ENTRY

31. Until termination of this Decree, EPA and IDEM and their representatives, contractors, and consultants shall have the authority to enter any facility covered by this Decree at all times upon proper presentation of credentials to the Town's Director of Public Works or the Director's designee (one of whom will be available at all times by telephone at a number to be furnished and updated by the Town to EPA and IDEM), for the purposes of:

(a) monitoring the progress of activities required by this Decree;

(b) verifying any data or information submitted to EPA and IDEM in accordance with the terms of the Decree;

(c) obtaining samples and, upon request, splits of any samples taken by the Town or its consultants; and

(d) assessing the Town's compliance with this Decree.

This provision in no way limits or affects any rights of entry and inspection held by either EPA or IDEM pursuant to applicable federal or state laws or regulations.

XIV. FORCE MAJEURE

32. The Town's obligation to comply with the schedules and deadlines set forth in this Consent Decree may be delayed or

excused only to the extent that circumstances beyond the Town's control cause the noncompliance. Increased costs of performing any requirement of this Consent Decree shall not constitute circumstances beyond the control of the Town, or serve as the basis for an extension of time under this Consent Decree.

33. If any event occurs that causes or may cause delay in the Town's compliance with any requirements of this Consent Decree, the Town shall notify EPA and IDEM in writing within 10 business days of when the Town first knows of the delay or when the Town should have known of the delay. The notice shall describe in detail the requirement(s) of this Consent Decree affected, the anticipated length of the delay, the precise cause(s) of the delay, the measures taken and to be taken by the Town to prevent or minimize the delay, and the schedule by which those measures will be implemented. The Town shall adopt all measures to avoid or minimize any delay or noncompliance. Failure by the Town to comply with the notice requirements of this Section as to a particular event shall constitute a waiver of the Town's opportunity to request an extension of its obligations under this Consent Decree based on that event.

34. If EPA and IDEM agree that the Town's inability to comply with this Consent Decree is the result of circumstances beyond the control of the Town, the Town's compliance shall be excused as to the requirement(s) of this Consent Decree affected by such circumstances. Any extension of time pursuant to this

Section shall be for a period no longer than the delay resulting from the circumstances that were beyond the Town's control.

35. If the parties are unable to reach agreement concerning whether noncompliance was caused by circumstances beyond the control of the Town, the Town may petition the Court for appropriate relief. The Town shall have the burden of proving that any noncompliance was caused by circumstances beyond its control.

36. An extension of one compliance date shall not, by itself, extend the Town's time for compliance with any other or subsequent compliance date. The Town must make a separate showing regarding each requirement for which the Town seeks an extension.

XV. DISPUTE RESOLUTION

37. Any dispute arising under or concerning this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to this action for a period of 15 working days from the time when a written Notice of Dispute is first given. The period for negotiations may be extended by agreement of the parties to the dispute.

38. The procedures for invoking the formal dispute resolution procedures shall be as follows:

(a) If a dispute between the parties cannot be resolved by informal negotiations under the preceding paragraph, then the position advanced by EPA or IDEM shall be considered binding unless, within 20 working days after the end of the informal negotiations period, the Town invokes the formal dispute resolution procedures of this Section by serving on

EPA and IDEM a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position, and any supporting documentation relied upon by the Town. The Statement of Position shall specify the Town's position as to whether formal dispute resolution should proceed under paragraph 39 or 40.

(b) Within 14 days after receipt of the Town's Statement of Position, EPA and/or IDEM shall serve on the Town a Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA and/or IDEM. EPA's and/or IDEM's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under paragraph 39 or 40.

(c) If there is disagreement between EPA or IDEM and the Town as to whether dispute resolution should proceed under paragraph 39 or 40, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA or IDEM to be applicable.

39. Formal dispute resolution for disputes pertaining to the selection or adequacy of any action taken pursuant to Section VI of this Consent Decree and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this paragraph. For purposes of this paragraph, disputes concerning the following shall be resolved according to the procedures in this paragraph: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA or IDEM under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. The procedures of this paragraph shall be as follows:

(a) An administrative record of the dispute shall be maintained by EPA or IDEM and shall contain all statements of position, including supporting documentation, submitted

pursuant to this paragraph. Where appropriate, EPA or IDEM may allow submission of supplemental statements of position by the parties to the dispute.

(b) The Director of the Water Division in EPA Region 5 will issue a final administrative decision resolving the dispute based on the administrative record described in the preceding subparagraph. This decision shall be binding upon the Town, subject only to the right to seek judicial review pursuant to the following two subparagraphs.

(c) Any administrative decision made by EPA pursuant to the preceding subparagraph shall be reviewable by the Court provided that a notice of judicial appeal is filed by the Town with the Court and served on EPA and IDEM within 30 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must by resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the Town's notice of judicial appeal.

(d) In proceedings on any dispute governed by this paragraph, the Town shall have the burden of demonstrating that the decision of the Director of the Water Division is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to this paragraph.

40. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any action taken pursuant to Section VI of this Decree nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this paragraph, and proceed as follows:

After submission of the parties' Statements of Position pursuant to paragraph 38, the Director of the Water Division, EPA Region 5, will issue a final decision resolving the dispute. The decision of the Director of the Water Division shall be binding on the Town unless, within 30 days of receipt of the decision, the Town files with the Court and serves on EPA and IDEM a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved

to ensure orderly implementation of the Consent Decree. The United States or the State may file a response to the Town's notice of judicial appeal.

41. The invocation of formal dispute resolution procedures under this Section shall not of itself extend or postpone any obligation of the Town under this Consent Decree, but the payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of noncompliance with any provision of this Consent Decree and shall be paid within 15 calendar days after the Court issues an order resolving the dispute or after the resolution of any appeal concerning the dispute. To the extent the Town prevails on the disputed issue, stipulated penalties shall be excused.

XVI. NOT A PERMIT

42. This Decree is not and shall not be interpreted to be a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, or any other provision of federal or state law.

XVII. FAILURE OF COMPLIANCE

43. The United States and the State, by their consent to the entry of this Decree, do not warrant or aver in any manner that the Town's complete compliance with this Decree will result in compliance with the provisions of the Act, 33 U.S.C. § 1251 *et seq.*, or with any other provision of federal or state law.

Notwithstanding EPA's and IDEM's review and approval of any plans formulated pursuant to this Decree, the Town shall remain solely responsible for compliance with the terms of the Act and all other applicable provisions of federal and state law and this Decree.

XVIII. NON-WAIVER PROVISIONS

44. Except as provided in Section XXIV, below, this Decree in no way affects or relieves the Town of the Town's responsibility to comply with any federal, state, or local law or regulation.

45. Except as provided in Section XXIV, below, nothing contained in this Decree shall be construed to prevent or limit the United States' or the State's right to obtain penalties or injunctive relief under the Act or other federal and state statutes or regulations.

46. The parties agree that the Town is responsible for achieving and maintaining complete compliance with all applicable federal and state laws and regulations.

47. This Decree does not limit or affect the rights of the Town, the United States, or the State with respect to any third parties, including, without limitation, the right of the United States or the State to bring any cause of action that the United States or the State may have against any industrial discharger located within the Town.

48. The United States, the State, and the Town reserve any and all legal and equitable remedies and defenses available concerning enforcement of the provisions of this Decree.

XIX. COSTS OF SUIT

49. Each party shall bear its own costs and attorney's fees in this action. Should the Town subsequently be determined to have violated the terms and conditions of this Decree, then the Town shall be liable to the United States and the State for any costs and attorney's fees incurred by the United States or the State in any actions against the Town for noncompliance with this Decree.

XX. FORM OF NOTICE

50. Except as specified otherwise, when written notification to or communication with the United States, EPA, the State of Indiana, IDEM, or the Town is required by the terms of this Decree, it shall be addressed as follows:

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Ben Franklin Station
Washington, D.C. 20044
Reference No. 90-5-1-1-3980

and

United States Attorney
Northern District of Indiana
1001 Main Street, Suite A
Dyer, Indiana 46311

As to EPA:

Chief, Compliance Section
Water Division
U.S. Environmental Protection Agency -
Region V
77 West Jackson Boulevard (WCC-15J)
Chicago, Illinois 60604-3590

As to the State of Indiana:

Environmental Section
Office of the Attorney General
Indiana Government Center South
5th Floor
402 N. Washington Street
Indianapolis, IN 46220

As to IDEM:

Chief, Water Enforcement Section
Indiana Department of Environmental Management
100 N. Senate Street
P.O. Box 6015
Indianapolis, IN 46206

As to the Town:

Clerk-Treasurer
Town of Griffith, Indiana
111 N. Broad Street
Griffith, IN 46319

51. Notifications or communications required to be submitted under this Decree shall be deemed submitted on the date they are deposited in the United States mail.

XXI. MODIFICATION

52. Schedules and tasks specified in studies or plans approved by EPA and IDEM under this Decree may be modified by written agreement of all of the parties to this Decree. There

shall be no other modifications of this Decree without the written approval of all of the parties to this Decree and of the Court.

XXII. PUBLIC COMMENT

53. The parties agree and acknowledge that final approval by the United States and entry of this Decree is subject to the requirement of 28 C.F.R. § 50.7 which provides for notice of the lodging of this Decree and opportunity for public comment, and the consideration of any comments. The United States reserves the right to withdraw its consent to this Decree if any comment discloses facts or considerations that indicate the proposed settlement is inappropriate, improper, or inadequate.

XXIII. NON-SEVERABILITY

54. It is the intent of the parties that the clauses in this Decree are not severable. If a Court of competent jurisdiction declares any provision to be unenforceable, the remaining provisions of this Decree shall be of no force or effect unless the parties otherwise agree in writing.

XXIV. FULL SETTLEMENT

55. Entry of this Decree shall fully satisfy all civil liability of the Town for the violations alleged against the Town in the Complaint filed by the United States and in the cross claims filed by the State in this matter through the date of

entry of this Decree. Terms of settlement embodied in this Decree are limited to resolution of the civil claims set forth in the United States' Complaint and the State's cross claims, and do not affect the Town's liability for compliance with other aspects of applicable federal and state laws and regulations. Entry of this Consent Decree shall in no way be construed to affect the re-alignment of the Town as a plaintiff in this matter.

XXV. RETENTION OF JURISDICTION

56. The Court shall retain jurisdiction over the subject matter of this action and over the parties for the purpose of enforcing the terms of this Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of the terms of this Decree.

XXVI. EFFECTIVE AND TERMINATION DATES

57. This Decree shall be effective upon the date of its entry by the Court.

58. This Decree shall terminate twelve months after all actions to be taken pursuant to Section VI of this Decree have been completed, provided that the Town has been in continuous compliance with the terms of the Decree for the preceding twelve months and that the Town has paid any accrued stipulated penalties due and owing. The United States or the State shall have the right to request that the Court extend this period in

the event the Town has violated any terms or conditions of this Decree.

Dated and entered this 19 day of June, 1997.

UNITED STATES DISTRICT JUDGE

CONSENT DECREE among the United States, the State of Indiana, and the Town of Griffith in United States v. Sanitary District of Hammond, et al.

FOR THE UNITED STATES OF AMERICA:

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

NANCY J. SPENCER
SCOTT SIFF
Attorneys
Environmental Enforcement Section
United State Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611

JON E. DeGUILIO
United States Attorney
Northern District of Indiana

CAROL DAVILO
Assistant United States Attorney
Northern District of Indiana
1001 Main Street, Suite A
Dyer, Indiana 46311

CONSENT DECREE among the United States, the State of Indiana, and the Town of Griffith in United States v. Sanitary District of Hammond, et al.

VALDAS V. ADAMKUS
Regional Administrator
U.S. Environmental Protection Agency
Region V
Chicago, Illinois 60604

ROBERT S. GUENTHER
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region V
Chicago, IL 60604

CONSENT DECREE among the United States,
the State of Indiana, and the Town of Griffith in
United States v. Sanitary District of Hammond, et al.

FOR THE STATE OF INDIANA:

OFFICE OF THE GOVERNOR

MICHAEL O'CONNOR
Commissioner, Indiana Department of
Environmental Management

Approved as to Form and Legality:

PAMELA CARTER
Attorney General, State of Indiana

By:

ANITA KIMMELL
Office of the Attorney General
Indiana Government Center South
5th Floor
402 N. Washington Street
Indianapolis, IN 46220

CONSENT DECREE among the United States,
the State of Indiana, and the Town of Griffith in
United States v. Sanitary District of Hammond, et al.

FOR THE TOWN OF GRIFFITH, INDIANA:

Stanley Dobosz

President of the Town Council

CERTIFICATE OF SERVICE

I certify that on March 21, 1997 copies of the foregoing Notice of Lodging of Proposed Consent Decree Among United States, State of Indiana and Defendant The Town of Griffith and the proposed Consent Decree were served upon the following persons by first class United States mail:

Joseph P. Allegretti
6920 Hohman Avenue
Hammond, IN 46324-1495

Eugene M. Feingold
707 Ridge Road, Suite 204
Munster, IN 46321

Anita Kimmell
Office of the Attorney General
State of Indiana
219 State House
Indianapolis, IN 46204

Robert M. Schwerd
Michael D. Dobosz
Hilbrich, Cunningham & Schwerd
2637-45th Street
Highland, Indiana 46322

Maureen Johns Grimmer
Eichhorn, Eichhorn & Link
200 Russell Street
Hammond, IN 46325

H. Peter Haveles, Jr.
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, NY 10038

Geoffrey K. Barnes
John H. Distin
Scott Blackhurst
Squire, Sanders & Dempsey
4900 Society Center
127 Public Square
Cleveland, Ohio 44114-1304

Charles A. Myers
McHie, Myers, McHie & Enslen
53 Muenich Court
Hammond, IN 46320

James A. Vroman
Ellen L. Partridge
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611

Laurence A. McHugh
Richard W. Morgan
Jean L. Doyle
James M. Lewis
Barnes & Thornburg
600 1st Source Bank Center
100 North Michigan
South Bend, IN 46601-1632

James W. Clark
Mark A. Voigtmann
Baker & Daniels
300 North Meridian Street
Suite 2700
Indianapolis, IN 46204-1782

David F. Williams
Cadwalader, Wickersham & Taft
1333 New Hampshire Ave., NW
Suite 700
Washington, DC 20036

Thomas Harrison
Day, Berry & Howard
CityPlace
Hartford, CT 06103-3499

Peter L. Hatton
Schiff, Hardin & Waite
8585 Broadway, Suite 842
Merrillville, IN 46410

Joseph Stalmack
Galvin, Stalmack & Associates
5253 Hohman Avenue
Hammond, IN 46320

Glenn M. Young
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044-0407

Daniel M. Steinway
J. Barton Seitz
Kelley, Drye & Warren
1200 19th Street, N.W.; Suite 500
Washington, D.C. 20036

James D. Freeman

James D. Freeman
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-4793