IN THE COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO

STATE OF OHIO, ex rel.	:	
RICHARD CORDRAY	:	
ATTORNEY GENERAL OF OHIO	:	**CASE NO.** 10-CV-40433
Plaintiff,	:	
v.	:	**JUDGE**
CITY OF DEFIANCE, OHIO,	:	
Defendant.	:	

FILED
COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO
MAR 02 2010
Amy M. Galbraith
CLERK

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein seeking injunctive relief and civil penalties from Defendant City of Defiance, Plaintiff State of Ohio, by its Attorney General Richard Cordray (hereinafter "Plaintiff"), and Defendant City of Defiance (hereinafter "Defendant") hereby consent to the entry of this Consent Order.

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to Revised Code ("R.C.") Chapter 6111. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted against Defendant.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon Defendant, Defendant's agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with them. Defendant shall provide a copy of this Consent Order to each general contractor and each consultant or engineer that it employs to perform any of the activities or work itemized herein. Defendant shall require each general contractor, consultant or engineer to provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. The Complaint alleges that Defendant has operated its wastewater treatment works and sewerage system in such a manner as to result in violations of the requirements of the National Pollutant Discharge Elimination System ("NPDES") Permits issued to it by the Director of Ohio EPA and in violation of R.C. Chapter 6111 and the water pollution control laws of the State of Ohio. Defendant denies the allegations contained in the Complaint. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of the Defendant for all claims or violations alleged in the Complaint, including the claims for injunctive relief and civil penalties.

4. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against Defendant or other appropriate persons for claims or conditions not

alleged in the Complaint, including violations which occur after the filing of the Complaint. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against other appropriate persons for claims or conditions alleged in the Complaint. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

IV. DEFINITIONS

5. The following terms are defined below for the purposes of this Consent Order.

6. "Combined Sewer System" or "CSS" shall mean the portions of Defendant's Sewer System designed to convey both municipal sewage (including sewage, industrial waste and other waste) and storm water runoff through a single pipe to Defendant's interceptor sewers, Wastewater Treatment Plants or a Combined Sewer Overflow Outfall, or any area that is tributary to a sewer regulator. Defendant's CSS is set forth in the map attached hereto as Attachment A. Attachment A is incorporated into this Consent Order as if fully restated herein.

7. "Combined Sewer Overflow" or "CSO" shall mean any discharge from: (i) any overflow and/or outfall identified as a combined sewer overflow or CSO in Defendant's current NPDES Permit, as defined below, or (ii) from any other combined sewer structure within the CSS.

8. "Combined Sewer Overflow Outfall" or "CSO Outfall" shall mean the outfall from which CSOs discharge to waters of the state.

9. "Commencement of construction" shall mean either actual commencement of construction by the milestone date set forth in the schedule in paragraphs 23 and 31 of this Consent Order, or the issuance of the Notice to Proceed by the milestone date accompanied by

the actual commencement of construction within ninety (90) days of the issuance of the Notice to Proceed.

10. "Completion of construction" shall mean the completion of all aspects of construction which are needed for the improvements to be fully operational, and that the improvements are fully operational, on a particular group as set forth in the schedule in paragraphs 23 and 31 of this Consent Order, other than the physical plugging of the CSO, which shall be governed by paragraph 25(B) of this Consent Order.

11. "Critical milestone" shall mean the commencement of construction and completion of construction dates as set forth in Sections VI and VII of this Consent Order.

12. "CSO Policy" shall mean the U.S. Environmental Protection Agency's "Combined Sewer Overflow Policy" which was published in the Federal Register on April 19, 1994 (59 Fed. Reg. 18688, et seq.).

13. "NPDES Permit" shall mean NPDES Permit 2PD00013*SD, and any such NPDES permits that succeed that permit and are in effect at a particular time in question.

14. "Nine Minimum Controls" shall mean the Nine Minimum Controls set forth in the CSO Policy at 59 Fed. Reg. 18691.

15. "Outfall 050" is the mechanical plant bypass through Sampling Station Number 2PD00013050 of the wastewater treatment works that bypasses aeration in secondary treatment and the final settling tanks in tertiary treatment.

16. "Outfall 051" is the mechanical plant bypass through Sampling Station Number 2PD00013051 of the wastewater treatment works that bypasses primary settling as provided in the NPDES permit.

17. "Sewer System" shall mean the wastewater collection and transmission system

owned or operated by Defendant designed to collect and convey municipal sewage (sewage, industrial waste and other waste) to Defendant's Wastewater Treatment Plants or overflow structures and/or outfall locations. Sewer System includes but is not limited to the CSS.

18. "Wastewater Treatment Works" or "WWTW" shall refer to Defendant's Wastewater Treatment Plant.

19. "Water Quality Standards" or "WQS" shall mean the water quality standards adopted by Ohio that are in effect at any particular point in time. These water quality standards may appear in OAC Chapter 3745-1 or elsewhere in the Ohio Administrative Code. Water Quality Standards shall also include any applicable water quality standards promulgated by U.S. EPA for waters of the state pursuant to 33 U.S.C. §1313(c)(4).

V. INJUNCTIVE RELIEF

20. Defendant is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder, and the terms and conditions of its NPDES Permit, including NPDES Permit No. 2PD00013*SD, and any renewals or modifications thereof.

21. Defendant is hereby enjoined to properly operate and maintain its Sewer System and any associated equipment and structures. Defendant shall implement its Combined Sewer Systems Operations and Maintenance Plan ("CSSOMP") approved by the Director on May 20, 1999, and updated in 2001. The CSSOMP may be periodically updated but the plan shall always outline the procedures used to ensure that the collection system is adequately maintained, and the steps taken to ensure that the frequency, duration and volume of flow, and that the pollutant loads discharged from the permitee's combined sewer overflows are minimized in accordance with the Nine Minimum Controls. The CSSOMP shall require the submission of an annual

report to Ohio EPA as specified in section VIII of this Consent Order. The CSSOMP shall always include routine inspection schedules for the critical components of the CSS. In the event that Ohio EPA later approves further changes to the approved CSSOMP, Defendant shall thereafter operate and maintain the CSS in accordance with such changes.

VI. SCHEDULE FOR IMPLEMENTATION OF LONG TERM CONTROL PLAN

22. Defendant is enjoined to implement the December 1998 CSO Long Term Control Plan as updated by the July 2003 Addendum No.1 ("LTCP") in accordance with the schedule set forth in this Consent Order, and to meet the goal of elimination of all CSOs and CSO outfalls and any plant bypasses. After completion of implementation, all wastewater reaching the plant shall receive full treatment.

23. Defendant shall meet the following milestones as set forth in the LTCP schedule. The years of construction for each LTCP group are set forth in the map attached hereto as Attachment B. Attachment B is incorporated into this Consent Order as if fully restated herein.

A. CSO LTCP Group 2 Sewer Separation: planning shall begin by July 2002 and conclude by July 2005; design shall begin by February 2005 and conclude by October 31, 2006; construction shall commence by February 28, 2007 and shall be complete, with the improvements fully operational, by December 31, 2007.

B. CSO LTCP Groups 1 and 3 Sewer Separation: planning shall begin by September 2005 and conclude by February 2007; design shall begin by January 31, 2007 and conclude by September 30, 2007; construction shall commence by January 31, 2008 and shall be complete, with the improvements fully operational, by December 31, 2008.

C. CSO LTCP Group 2 Express Sewer System: design shall begin by October 2006 and conclude by August 31, 2007; construction shall commence by November 30, 2007 and shall be complete, with the improvements fully operational, by October 31, 2008.

D. CSO LTCP Group 4 Sewer Separation: planning shall begin by September 2006 and conclude by September 30, 2007; design shall begin by September 30, 2007 and conclude by March 31, 2008; construction

shall commence by July 31, 2008 and shall be complete, with the improvements fully operational, by November 30, 2009.

E. CSO LTCP Group 6 Sewer Separation: planning shall begin by October 31, 2007 and conclude by May 31, 2008; design shall begin by May 31, 2008 and conclude by February 28, 2009; construction shall commence by July 15, 2009 and shall be complete, with the improvements fully operational, by May 31, 2010.

F. CSO LTCP Group 5 Sewer Separation: planning shall begin by June 30, 2008 and conclude by December 31, 2008; design shall begin by April 30, 2009 and conclude by December 31, 2009; construction shall commence by April 30, 2010 and shall be complete, with the improvements fully operational, by December 31, 2010.

G. CSO LTCP Group 14 Sewer Separation: planning shall begin by March 31, 2010 and conclude by December 31, 2010; design shall begin by March 31, 2011 and conclude by December 31, 2011; construction shall commence by March 31, 2012 and shall be complete, with the improvements fully operational, by December 31, 2012.

H. CSO LTCP Group 15 Sewer Separation: planning shall begin by March 31, 2011 and conclude by December 31, 2011; design shall begin by March 31, 2012 and conclude by December 31, 2012; construction shall commence by March 31, 2013 and shall be complete, with the improvements fully operational, by December 31, 2013.

I. CSO LTCP Group 12 Sewer Separation: planning shall begin by March 31, 2010 and conclude by December 31, 2010; design shall begin by March 31, 2013 and conclude by December 31, 2013; construction shall commence by March 31, 2014 and shall be complete, with the improvements fully operational, by December 31, 2014.

J. CSO LTCP Group 10 Sewer Separation: planning shall begin by March 31, 2014 and conclude by December 31, 2014; design shall begin by March 31, 2015 and conclude by December 31, 2015; construction shall commence by March 31, 2016 and shall be complete, with the improvements fully operational, by December 31, 2016.

K. CSO LTCP Group 7 Sewer Separation: planning shall begin by March 31, 2015 and conclude by December 31, 2015; design shall begin by March 31, 2016 and conclude by December 31, 2016; construction shall commence by March 31, 2017 and shall be complete, with the improvements fully operational, by December 31, 2017.

L. CSO LTCP Group 8 Sewer Separation: planning shall begin by March 31,

2016 and conclude by December 31, 2016; design shall begin by March 31, 2017 and conclude by December 31, 2017; construction shall commence by March 31, 2018 and shall be complete, with the improvements fully operational, by December 31, 2018.

M. CSO LTCP Group 9 Sewer Separation: planning shall begin by March 31, 2017 and conclude by December 31, 2017; design shall begin by March 31, 2018 and conclude by December 31, 2018; construction shall commence by March 31, 2019 and shall be complete, with the improvements fully operational, by December 31, 2019.

N. CSO LTCP Group 11 Sewer Separation: planning shall begin by March 31, 2018 and conclude by December 31, 2018; design shall begin by March 31, 2019 and conclude by December 31, 2019; construction shall commence by March 31, 2020 and shall be complete, with the improvements fully operational, by December 31, 2020.

O. CSO LTCP Group 13 Sewer Separation: planning shall begin by March 31, 2019 and conclude by December 31, 2019; design shall begin by March 31, 2020 and conclude by December 31, 2020; construction shall commence by March 31, 2021 and shall be complete, with the improvements fully operational, by December 31, 2021.

P. CSO LTCP Group 16 Sewer Separation: planning shall begin by March 31, 2020 and conclude by December 31, 2020; design shall begin by March 31, 2021 and conclude by December 31, 2021; construction shall commence by March 31, 2022 and shall be complete, with the improvements fully operational, by December 31, 2022.

Q. CSO LTCP Group 17 Sewer Separation: planning shall begin by March 31, 2021 and conclude by December 31, 2021; design shall begin by March 31, 2022 and conclude by December 31, 2022; construction shall commence by March 31, 2023 and shall be complete, with the improvements fully operational, by December 31, 2023.

R. CSO LTCP Group 18 Sewer Separation: planning shall begin by March 31, 2022 and conclude by December 31, 2022; design shall begin by March 31, 2023 and conclude by December 31, 2023; construction shall commence by March 31, 2024 and shall be complete, with the improvements fully operational, by December 31, 2024.

S. CSO LTCP Group 19 Sewer Separation: planning shall begin by March 31, 2023 and conclude by December 31, 2023; design shall begin by March 31, 2024 and conclude by December 31, 2024; construction shall commence by March 31, 2025 and shall be complete, with the improvements fully operational, by December 31, 2025.

T. CSO LTCP Group 20 Sewer Separation: planning shall begin by March 31, 2024 and conclude by December 31, 2024; design shall begin by March 31, 2025 and conclude by December 31, 2025; construction shall commence by March 31, 2026 and shall be complete, with the improvements fully operational, by December 31, 2026.

24. Any construction projects undertaken in the implementation of the sewer separation and the express sewers set forth in the above schedule will require submission of a Permit to Install ("PTI") application, accompanied by detail plans, as required by OAC Chapter 3745-42. Construction shall not commence until a PTI, based upon approval of detail plans, is obtained from Ohio EPA.

25. No later than six months from the entry of this Consent Order, Defendant is enjoined to submit to Ohio EPA for review a post construction compliance monitoring plan. This plan shall be adequate to determine whether the design criteria for each phase or group of projects implemented have been met, to evaluate the performance of each group of improvements in the LTCP separately, and to evaluate whether the ultimate goal of the elimination of CSOs, CSO outfalls, and any plant bypasses has been achieved and what impact the improvements have had on water quality in the water bodies as a result of each phase of construction. The plan shall include the following:

A. After the completion of construction for each group designated in the compliance schedule, Defendant shall evaluate the effectiveness of the work completed against the goal of eliminating all CSOs, CSO outfalls, and all plant bypasses. This evaluation shall be submitted to Ohio EPA no later than sixty (60) days after the completion of the two year evaluation period following the completion of construction date for each group, and shall determine: 1) if the LTCP measures, when completed, meet all design criteria and performance criteria specified in the LTCP, and the Permit to Install for such improvements; 2) whether Defendant's CSOs and CSO outfalls that are in the specific group at issue comply with the requirements of the Clean Water Act, U.S. EPA's CSO Policy, Chapter 6111 of the Revised Code and the rules promulgated thereunder, and Defendant's current permits; and 3) whether there are no overflows or bypasses, and if there are, an explanation of why. Defendant shall monitor

and evaluate the performance of the improvements of a specific group for two years after the completion of construction of improvements for that group, and for two years after the completion of the construction of the improvements system wide, Defendant shall monitor and evaluate the effectiveness of the improvements on a system wide basis.

B. Where physical elimination of the CSO is part of implementing the LTCP, Defendant shall have two years to monitor and evaluate the performance of the improvements of a specific group after the completion of construction for that group before physically eliminating (i.e. plugging) the CSO.

C. If Defendant needs additional time to eliminate CSOs and CSO outfalls or to correct other problems identified during the evaluation period, Defendant shall request an extension from Ohio EPA in writing as soon as practicable after identifying a problem, but not later than sixty (60) days after the end of the evaluation period. Such a request shall include the reason(s) the extension is necessary, explaining in detail the nature of the problem and the amount of time needed to correct it.

D. Upon receipt of Ohio EPA's approval of the extension request, Defendant shall initiate remedial measures to correct the problem(s) specified in the request, pursuant to any comments by Ohio EPA.

E. A schedule for performance of the evaluation at key points during the course of the implementation of the corrective measures, as well as after the completion of the corrective measures.

26. No later than six months from the entry of this Consent Order, Defendant is enjoined to develop and submit to Ohio EPA for review and approval a written public notification program. That public notification program shall, via the internet, billing notices, and newspaper references, notify the public of any recent rain events and likely overflows based on the predictive model, inform the public of the location of any CSO and/or CSO outfall, the possible health and environmental impacts associated with CSOs and CSO outfalls, the rainfall amounts likely to trigger an overflow, and advise the public against contact or recreation when elevated bacteria levels may endanger public health. This public notification program shall, *inter alia*, include on the internet site, a map of the CSOs and CSO outfalls, and using the predictive

model, list each occurrence and volume discharged from each CSO or CSO outfall for the previous year. This information shall be periodically updated consistent with the terms of the public notification program as approved. Upon approval of the public notification program by Ohio EPA, Defendant shall thereafter implement and comply with the program as approved.

VII. IMPROVEMENTS TO ELIMINATE RIVER WATER INTRUSION

27. Defendant is enjoined to implement the schedule for river water intrusion improvements as set forth herein, and to meet the goal of elimination of river water intrusion and infiltration into the Sewer System. Defendant's river water intrusion improvement areas are set forth in the map attached hereto as Attachment B. Attachment B is incorporated into this Consent Order as if fully restated herein.

28. No later than six months from the entry of this Consent Order, Defendant shall install devices to measure water surface elevation and water temperature at 10 specific locations within the Sewer System, and additional devices in the receiving waters. Defendant shall also monitor the water elevation of the receiving waters as available from the NOAA's Advanced Hydrologic Prediction Service website. Defendant shall conduct relevant air monitoring, including temperature, continue collecting precipitation onsite, and record the results of the monitoring and collection. The following locations will have the devices to measure water surface elevation and water temperature installed: Manhole 1208 located in the East Auglaize Interceptor with a rim elevation of 678.0 feet and an invert elevation of 655.70 feet; Manhole 410 located in the North Auglaize Interceptor with a rim elevation of 683.8 feet and an invert elevation of 665.69 feet; Manhole 900 located in the Summit Interceptor with a rim elevation of 674.0 feet and an invert elevation of 665.44 feet; Manhole 656 located in the South Auglaize Interceptor with a rim elevation of 673.1 feet and an invert elevation of 661.32 feet; Manhole 18

located in the Maumee Interceptor with a rim elevation of 676.2 feet and an invert elevation of 661.20 feet; Manhole 1406 located in the Northeast Interceptor with a rim elevation of 675.5 feet and an invert elevation of 666.13 feet; Manhole 402 located downstream of the Summit Interceptor, Upper Auglaize Siphon, North Auglaize Interceptor, and South Auglaize Interceptor with a rim elevation of 678.8 and an invert elevation of 658.32 feet; Manhole 6 located downstream of the Maumee River Siphon, Maumee Interceptor, Northwest Interceptor and Northeast Interceptor with a rim elevation of 678.60 and an invert elevation of 658.04 (near M-9 regulator); Kingsbury Pumping Station Wet Well located downstream of the Lower Auglaize River Siphon, Maumee Siphon, Maumee Interceptor, Northwest Interceptor, Northeast Interceptor, Summit Interceptor, Upper Auglaize Siphon, North Auglaize Interceptor and South Auglaize Interceptor with a bottom elevation of 642.00 feet; a control Manhole 73 located on Washington Avenue south of Fort Street with a rim elevation of 687.80 and an invert elevation of 676.74 (not affected by river water intrusion); and representative locations in the Auglaize River, Maumee River, and Preston Run.

In the event that Defendant needs to change any of the specifically identified locations above, Defendant shall submit the proposed change to Ohio EPA Northwest District Office for review and approval. The following river locations have river stage information available through the website mentioned above: Auglaize River at Power Dam; Maumee River at the water treatment plant; Maumee River at Independence Dam. Because representative, accessible manholes are unavailable for two interceptor sewers and a portion of a third, data shall be collected from the following pump stations: Northeast Pump station located in the middle of the Northeast interceptor with a bottom elevation of 653.00; Northwest Pump station located downstream of Northwest interceptor with a bottom elevation of 644.50; and Preston Run Pump

station located downstream of the Preston run interceptor with a bottom elevation of 651.00. A device to measure water surface elevation and water temperature in the pump stations may be installed if needed, or already available pump station data may be collected. The locations of the installed devices and the relevant pump stations to measure water surface elevation and temperature are set forth in the map attached hereto as Attachment C. Attachment C is incorporated into this Consent Order as if fully restated herein.

29. Once the devices required in Paragraph 28 are installed, Defendant shall commence the collection of data. Relevant data shall be collected as available from the installed devices, the Advanced Hydrologic Prediction Service website, and other sources as described in paragraph 28. The Defendant shall use this data for the determination of whether an overflow constitutes a wet or dry weather overflow. All required data shall be recorded on forms approved by the Ohio EPA and be available for review upon request. The forms titled "Collection System CSO Discharging Report" and "Weather Conditions and River Summary" shall be submitted to Ohio EPA on a monthly basis.

30. The planning phase of each of the groups of river water intrusion and infiltration improvements as set forth in paragraph 31 below shall include the submittal to Ohio EPA of a report which at a minimum, includes consideration of the data collected from the devices installed under paragraph 28 and any other data collected under paragraphs 28 and 29, and an evaluation of the options available to Defendant to eliminate the infiltration of river water into the Sewer System. Defendant will evaluate for each option: the costs of installation and maintenance, effect on the wastewater treatment plant and the entire Sewer System (including flow capacities needed and available in the system and resulting flows reaching the treatment facility), long term maintenance costs and the projected effective operational life. Defendant

shall consider, but is not limited to, the following options for the elimination of river water intrusion into the interceptor sewers and Sewer System: upgrading existing gravity sewer lines, conversion to forced main sewers, relocation of the flood plain sewers to higher ground and redirection of portions of flow to other regional treatment facilities. The Defendant shall make the required submission no later than sixty days after the end of the planning phase set forth in paragraph 31 for that project group.

31. Defendant shall meet the following milestones for the elimination of river water intrusion and infiltration from the Sewer System. Interceptor designations are as indicated in Figure 2 of Defendant's Combined Sewer System Operational Plan.

A. Kingsbury Area, including the lower section of the Summit Street Interceptor and East Auglaize Interceptor, and portions of the Northwest and Northeast Interceptors: planning shall begin by April 30, 2009 and conclude by December 31, 2009; design shall begin by March 31, 2013 and conclude by December 31, 2013; construction shall commence by March 31, 2014 and shall be complete, with the improvements fully operational, by December 31, 2014.

B. Maumee Interceptor, including the segments along Holgate Avenue and Fort Street, and North (Lower) Auglaize Interceptor: planning shall begin by October 31, 2007 and conclude by September 30, 2008; design shall begin by March 31, 2012 and conclude by December 31, 2012; construction shall commence by March 31, 2013 and shall be complete, with the improvements fully operational, by December 31, 2013.

C. South (Upper) Auglaize Interceptor: planning shall begin by March 31, 2013 and conclude by December 31, 2013; design shall begin by March 31, 2014 and conclude by December 31, 2014; construction shall commence by March 31, 2015 and shall be complete, with the improvements fully operational, by December 31, 2015.

D. Preston Run Interceptor: planning shall begin by March 31, 2024 and conclude by December 31, 2024; design shall begin by March 31, 2025 and conclude by December 31, 2025; construction shall commence by March 31, 2026 and shall be complete, with the improvements fully operational, by December 31, 2026.

32. Any construction projects undertaken in the implementation of the interceptor sewer improvements to eliminate river water intrusion and infiltration set forth in the above schedule will require submission of a PTI application, accompanied by detail plans, as required by OAC Chapter 3745-42. Construction shall not commence until a PTI, based upon approval of detail plans, is obtained from Ohio EPA.

33. After the completion of construction for each group designated in the compliance schedule in paragraph 31, Defendant shall have two years to evaluate the effectiveness of the work completed against the goal of elimination of river water intrusion and infiltration into the Sewer System.

A. This evaluation shall be submitted to Ohio EPA no later than sixty (60) days after the completion of the two year evaluation period following the completion of construction date for each group, and shall determine: 1) if the river water intrusion improvements, when completed, meet all design criteria and performance criteria specified in the Permit to Install for such improvements; 2) whether there is any river water intrusion or infiltration, and if there is, an explanation of why. Defendant shall monitor and evaluate the performance of the improvements of a specific group for two years after the completion of construction of improvements for that group, and for two years after the completion of the construction of the improvements system wide, Defendant shall monitor and evaluate the effectiveness of the improvements on a system wide basis.

B. If Defendant needs additional time to eliminate river water intrusion and infiltration in the Sewer System or to correct other problems identified during the evaluation period, Defendant shall request an extension from Ohio EPA in writing as soon as practicable after identifying a problem, but not later than sixty (60) days from the end of the evaluation period. Such a request shall include the reason(s) the extension is necessary, explaining in detail the nature of the problem and the amount of time needed to correct it.

C. Upon receipt of Ohio EPA's approval of the extension request, Defendant shall initiate remedial measures to correct the problem(s) specified in the request, pursuant to any comments by Ohio EPA.

VIII. REPORTING REQUIREMENTS

34. Defendant shall notify the Ohio EPA Northwest District Office within fourteen (14) days of completing each milestone set forth in paragraphs 23, 30 and 31, and each deadline set forth in paragraphs 25 and 33 of this Consent Order. Defendant shall also submit documentation, along with the notice to the Ohio EPA Northwest District Office, of the completion of construction of each group within fourteen (14) days of the completion of construction milestone.

35. Defendant shall submit to Ohio EPA annual reports of the progress on implementation of the CSO LTCP and implementation of the river water intrusion improvements.

36. Not later than February 1st of each calendar year, or as otherwise specified in the NPDES Permit, Defendant shall submit two copies of the annual report summarizing its CSO and CSO outfall discharges and CSO and CSO outfall control activities during the previous year, as required in the NPDES Permit and any future modifications of the permit. One copy of the report shall be sent to Ohio EPA, Division of Surface Water, Public Permits Unit, P.O. Box 1049, Columbus, Ohio, 43216-1049; and one copy shall be sent to Ohio EPA Northwest District Office, Attention: DSW Enforcement Coordinator. The report shall include:

A. An annual summary of the frequency and volume of CSO and CSO outfall discharges and the total annual loadings for the 5-day CBOD and total suspended solids. Information shall be provided for each CSO and CSO outfall station. The data shall be reported in the tabular format provided by Ohio EPA. Data for this annual summary may either be generated by Defendant's predictive collection system model using daily inputs of rainfall volume and duration, or it may be based on monitoring and sampling of the CSO and CSO outfall stations during wet weather events.

B. A summary of actions taken to implement the nine minimum controls in accordance with the combined sewer system operational plan that was approved by the Director on May 20, 1999 and updated in 2001. This will

include an evaluation of the need to modify the operational plan to reflect changes in the collection system, changes in operation and maintenance procedures, or other changes in activities required under the approved plan.

C. A summary of actions taken to implement Defendant's CSO LTCP originally submitted to Ohio EPA on December 21, 1998. "Addendum No. 1, July 2003" to the plan was submitted to Ohio EPA on July 31, 2003.

D. If Defendant is using its predictive collection system model to generate data for the annual CSO and CSO outfall discharge summary required by paragraph A above, an evaluation of the model and the need to edit the model's datafile or modify the program based on changes within the sewer system shall be submitted. The evaluation shall include a summary of revisions to the model that have been made based on the addition of sanitary sewers, elimination of storm sewer flow, changes in pumping capacities, or other changes to the wastewater treatment system or service area that are accounted for in the model's datafile or program.

IX. SUBMITTAL OF DOCUMENTS

37. Except as set forth in paragraph 36, above, all documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following address, unless indicated otherwise in this Consent Order, or to such addresses as Ohio EPA hereafter may designate in writing:

Ohio EPA
Northwest District Office
Division of Surface Water
347 N. Dunbridge Road
Bowling Green, Ohio 43402

Attention: Enforcement Coordinator

X. CIVIL PENALTY

38. It is hereby ordered that Defendant shall pay to the State of Ohio a civil penalty of Five Thousand dollars ($5,000.00) within thirty (30) days of the entry of this Consent Order. The penalty payment shall be paid by certified check for the appropriate amount, made payable

to "Treasurer State of Ohio," which check shall be delivered by mail or otherwise, to Karen Pierson, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

XI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

39. In lieu of payment of an additional Thirty-Five Thousand dollars ($35,000.00) of civil penalty under this Consent Order, and in furtherance of the parties' objectives to improve the environment and provide sewers to the Ayersville Water and Sewer District Area, Defendant shall, as a Supplemental Environmental Project ("SEP"), construct sanitary sewers for the Ayersville Water and Sewer District area pursuant to the schedule set forth below. Defendant shall expend at least One Hundred and Five Thousand dollars ($105,000.00) on this SEP, not reimbursed from any source, but in any event, shall complete construction of the sanitary sewers for the Ayersville Water and Sewer District area.

40. Defendant shall construct sanitary sewers to address the nuisance conditions in the following areas: 1) the triangle formed by Dohoney Road, Standley Road, and Defiance-Ayersville Road; and 2) Defiance-Ayersville Road southeast to the intersection of Fullmer and Shindler Roads, in accordance with the following schedule:

A. Within two (2) years after the entry of this Consent Order, Defendant shall submit a complete Permit to Install ("PTI") application and approvable detail plans to sewer the area.

B. Within two and one half (2.5) years after the entry of this Consent Order, Defendant shall commence construction of the sewer system in accordance with the PTI and approved plans.

C. Within three (3) years after the entry of this Consent Order, Defendant

shall complete construction of the sewer system, connect area residents, and achieve compliance with Ohio's water pollution control laws, R.C. Chapter 6111 and the rules promulgated thereunder.

41. If Defendant does not comply with the SEP schedule set forth in paragraph 40 above, Defendant shall immediately pay Thirty-Five Thousand dollars ($35,000.00) to the State of Ohio at the address set forth in paragraph 38, above, for deposit into the Surface Water Improvement Fund.

42. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

A. That, as of the date of executing this Consent Order, Defendant is not required to perform or develop the SEP by any federal, state or local law or regulation and is not required to perform or develop the SEP by agreement, grant or as injunctive relief awarded in any other action in any forum;

B. That the SEP is not a project that Defendant is currently planning or intending to construct, perform or implement other than in settlement of the claims resolved in this Consent Order;

C. That Defendant has not received and will not receive credit for the SEP in any other enforcement action; and

D. That Defendant will not receive any reimbursement for any portion of the One Hundred and Five Thousand dollar ($105,000.00) expenditure required under paragraph 39 above from any other person or entity.

XII. STIPULATED PENALTIES

43. For each day Defendant fails to meet a deadline established in or pursuant to Sections V and VIII of this Consent Order, or critical milestone established in or pursuant to paragraphs 23 and 31 of this Consent Order, Defendant shall be liable for and shall pay a penalty pursuant to the following schedule:

i. For each day of non-compliance after the scheduled deadline or critical milestone date from one (1) day to thirty (30) days – Two Hundred and Fifty dollars ($250.00) per day not met;

ii. For each day of non-compliance after the scheduled deadline or critical milestone date from thirty-one (31) days to sixty (60) days – Five Hundred dollars ($500.00) per day not met;

iii. For each day of non-compliance after the scheduled deadline or critical milestone date from sixty-one (61) days to ninety (90) days – Seven Hundred and Fifty dollars ($750.00) per day not met.

iv. For each day of non-compliance after the scheduled deadline or critical milestone date over ninety (90) days – One Thousand dollars ($1,000.00) per day not met.

44. For each day that Defendant fails to conduct an inspection required by the approved CSSOMP, Defendant shall be liable for and shall pay a penalty. Defendant shall pay stipulated penalties pursuant to this paragraph on a quarterly basis and according to the following schedule:

i. If Defendant misses between one (1) and five (5) inspections in one quarter – Two Hundred dollars ($200.00) per missed inspection.

ii. If Defendant misses between five (5) and ten (10) inspections in one quarter – Four Hundred dollars ($400.00) per missed inspection.

iii. If Defendant misses more than ten (10) inspections in one quarter – Six Hundred dollars ($600.00) per missed inspection.

45. During the term of this Consent Order, Defendant shall pay a stipulated penalty of one thousand, five hundred dollars ($1,500.00) for each dry weather CSO event. For purposes of this paragraph, an "event" means each day (up to 24 hours) for each location that an overflow and/or discharge occurred from a CSO. Stipulated penalties under this paragraph shall not apply to overflows and/or discharges resulting from river water intrusion.

46. During the term of this Consent Order, Defendant shall pay a stipulated penalty of two thousand dollars ($2,000.00) for each dry weather overflow event resulting from river water intrusion in Defendant's Sewer System within the area of a specific group after the completion of construction and implementation of the improvements required under paragraph 31 for that group, unless it is determined that the overflow is due to the impact of river water intrusion within a specific group not yet scheduled to be complete under paragraph 31. For purposes of this paragraph, an "event" means each day (up to 24 hours) for each location that an overflow and/or discharge occurred.

47. For each calendar day before January 1, 2027 on which there is a discharge from or bypass via outfall 050 and the peak influent rate to the wastewater treatment plant does not exceed 6.53 million gallons per day ("MGD"), Defendant shall pay a stipulated penalty of two thousand dollars ($2,000.00) per day. For each calendar day before January 1, 2027 on which there is a discharge from or bypass via outfall 050 that is otherwise in violation of the NPDES permit, Defendant shall pay a stipulated penalty of two thousand dollars ($2,000.00) per day. For each calendar day after January 1, 2027 on which there is any discharge from or bypass via outfall 050 in violation of the NPDES permit, Defendant shall pay a stipulated penalty of three thousand dollars ($3,000.00) per day.

48. For each calendar day after January 1, 2027 on which there is a discharge from or bypass via outfall 051 in violation of the NPDES permit, Defendant shall pay a stipulated penalty of two thousand dollars ($2,000.00) per day.

49. For each calendar day on which there is a discharge from a CSO or CSO outfall location within the area of a specific group after the completion of construction and implementation of the improvements required by Paragraph 23 above for that group, Defendant shall pay a stipulated penalty of one thousand dollars ($1,000.00) per day per discharge.

50. For each calendar day on which there is a discharge from the Sewer System after the completion of construction and implementation of the improvements required under paragraphs 23 and 31 above system wide, Defendant shall pay a stipulated penalty of three thousand dollars ($3,000.00) per day per discharge.

51. Any stipulated penalty payment required to be made under paragraphs 43 through 50 shall be made within thirty (30) days of the failure, violation, bypass, or event without further demand or notice from the State. Any payment required to be made under this Section shall be made by certified check, payable to "Treasurer, State of Ohio," and shall be delivered to Karen Pierson, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, Public Protection Division, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. Defendant shall also include a written statement of the specific provision(s) of the Consent Order that was not complied with and the date(s) of non-compliance.

52. The imposition, payment and collection of stipulated penalties for specific violations of this Consent Order shall not prevent Plaintiff from pursuing additional remedies, civil, criminal or administrative, for violations of applicable laws. Further, payment by Defendant shall not be considered an admission of liability on the part of Defendant.

53. The stipulated penalties imposed by paragraphs 43 through 50 of this Consent Order may be terminated as to each specific paragraph of this Consent Order for which stipulated penalties are imposed only after Defendant has achieved and maintained compliance with all of the requirements of that paragraph for a period of twelve (12) consecutive months after the entry of this Consent Order and has paid all stipulated penalties incurred related to that paragraph. Termination of one stipulated penalties paragraph under this Consent Order shall not terminate the accrual of or the liability for payment of stipulated penalties under any other paragraph. Termination of stipulated penalties under this Consent Order shall only be by order of the Court upon written application by any party, and a demonstration that the requirements of this paragraph have been satisfied.

XIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

XIV. MISCELLANEOUS

55. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state and local laws, regulations, rules and ordinances. Defendant shall obtain any and all federal, state, or local permits, authorizations, and certifications necessary to comply with this Consent Order.

XV. POTENTIAL FORCE MAJEURE

56. If any event occurs which causes or may cause a delay of any requirements of this Consent Order, Defendant shall notify the Ohio EPA in writing within fourteen (14) days of the

event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendant to prevent or minimize the delay, and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

57. In any action by Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced by the Plaintiff. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved. It shall be at the option of Plaintiff to construe the failure as a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

Acceptance of this Consent Order with a Potential Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

XVI. RETENTION OF JURISDICTION

58. The Court shall retain jurisdiction of this action for purposes of enforcing this Consent Order.

59. There shall be no modification of this Consent Order without written approval by all of the Parties and the Court.

XVII. COSTS

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

XVIII. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK

61. The parties state that final approval by the Plaintiff and Defendant and entry of this Consent Order was subject to the requirement of 40 C.F.R. § 123.27(d)(2)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. Both the Plaintiff and Defendant had the right to withdraw consent to this Consent Order based on comments received during the public comment period, but did not exercise this right. Defendant shall pay the cost of publishing the public notice within thirty (30) days of receipt of a bill or notice from Ohio EPA.

62. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED.

/s/ Joseph N. Schmenk

DATE

JUDGE JOSEPH N. SCHMENK,
COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO

APPROVED:

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

Margaret A. Malone (0021770)
Jessica B. Atleson (0077871)
Assistant Attorneys General
Environmental Enforcement Section
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Counsel for Plaintiff, State of Ohio

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Facsimile: (419) 782-3223
E-mail: dhwilliams@msn.com

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Telephone: (440) 333-2508
Facsimile: (440) 333-1549
E-mail: john_distin@sbcglobal.net

Counsel for Defendant, City of Defiance

IT IS SO ORDERED.

DATE

JUDGE JOSEPH N. SCHMENK,
COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO

APPROVED:

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

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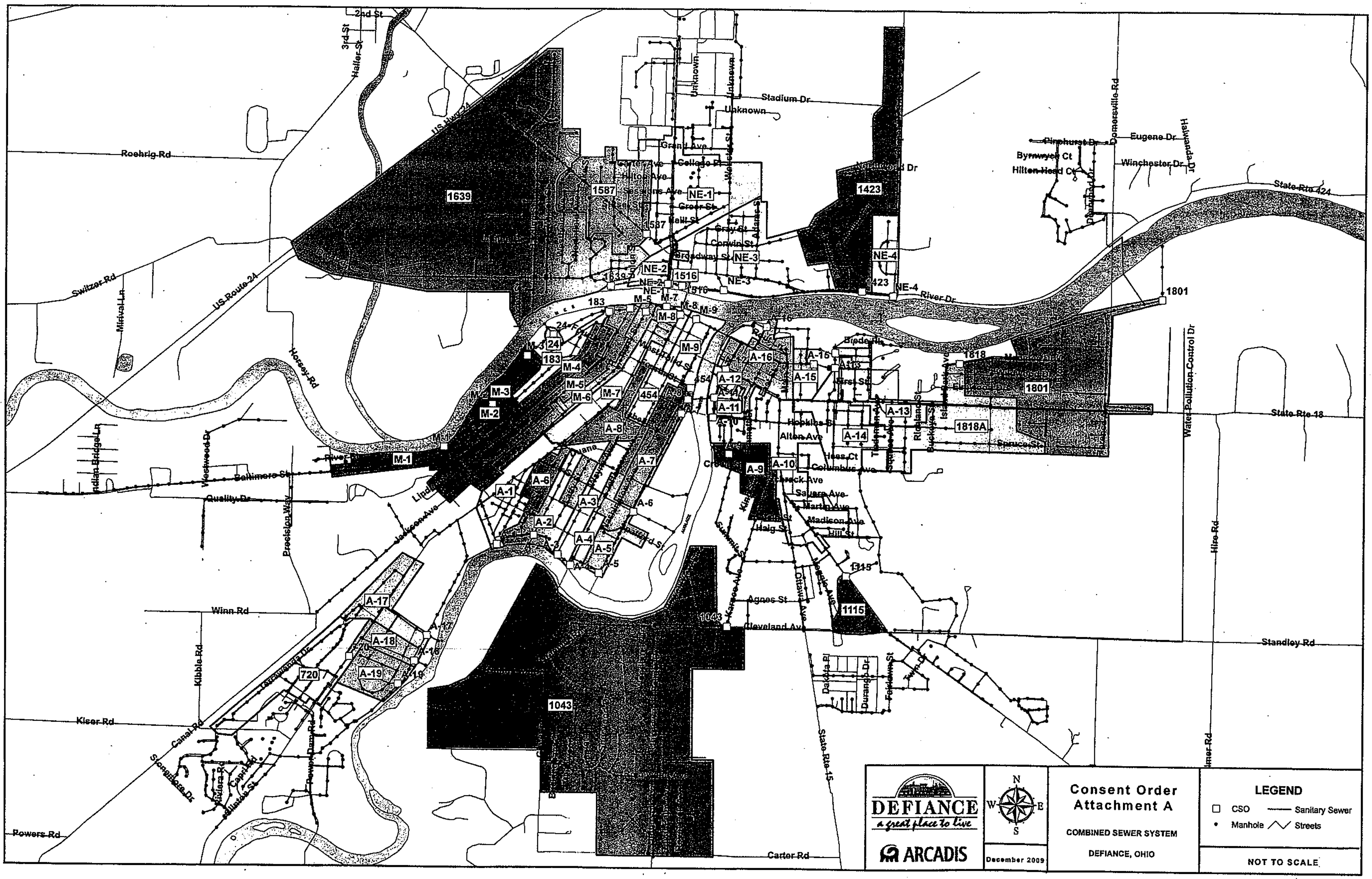
Consent Order
Attachment A
COMBINED SEWER SYSTEM
DEFIANCE, OHIO
December 2009
DEFIANCE
a great place to live
ARCADIS
LEGEND
CSO
Sanitary Sewer
Manhole
Streets
NOT TO SCALE
N
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S
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US Route 24
US Hwy 24
State Rte 424
State Rte 18
State Rte 15
River Dr
Switzer Rd
Roehrig Rd
Mirival Ln
Horzey Rd
Kibble Rd
Kiser Rd
Canal Rd
Powers Rd
Winn Rd
Precision Way
Quality Dr
Baltimore St
Westwood Dr
Indian Bridge Ln
Jackson Ave
Standley Rd
Carter Rd
Hire Rd
Domersville Rd
Water Pollution Control Dr
Stadium Dr
Eugene Dr
Winchester Dr
Cleveland Ave
Agnes St
Ottawa Ave
Karnes Ave
Dakota Pl
Durango Dr
Fairlawn St
Hopkins St
Allen Ave
Columbus Ave
Madison Ave
Haig St
Grand Ave
Carter Ave
College Pl
Sessions Ave
Greer St
Corwin St
Broadway St
Adams St
Stadium Dr
1639
1587
1516
1423
1801
1818
1818A
1043
1115
720
454
183
24
M-1
M-2
M-3
M-4
M-5
M-6
M-7
M-8
M-9
NE-1
NE-2
NE-3
NE-4
A-1
A-2
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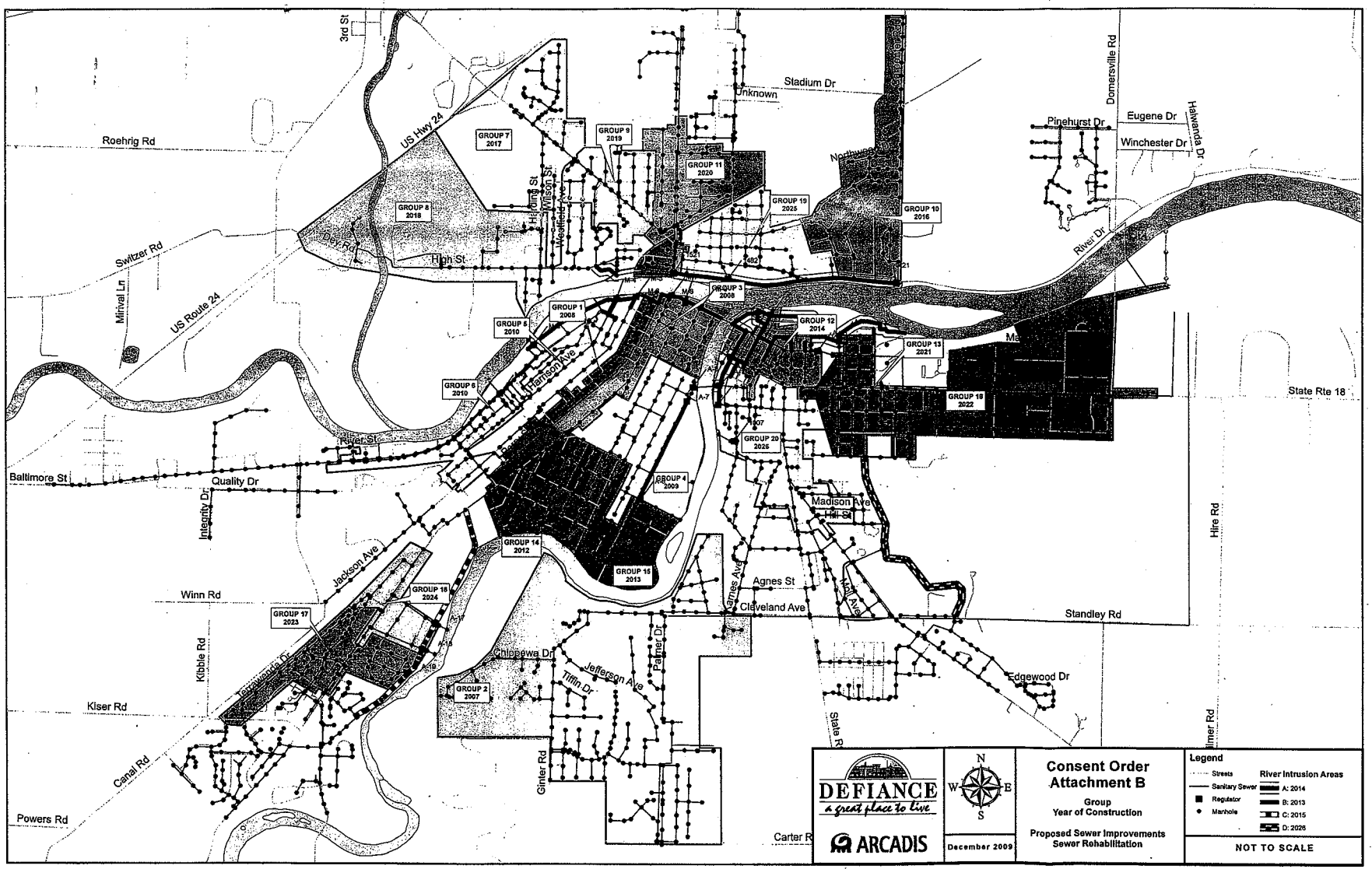
A-19


3rd St
Roehrig Rd
US Hwy 24
Stadium Dr
Unknown
Pinehurst Dr
Eugene Dr
Winchester Dr
Halwanda Dr
Domersville Rd
River Dr
Switzer Rd
Mirival Ln
US Route 24
Del Rd
High St
Harrison St
Westfield Ave
Harrison Ave
River St
Baltimore St
Quality Dr
Integrity Dr
Madison Ave
Hill St
State Rte 18
Hire Rd
Jackson Ave
Winn Rd
Agnes St
Cleveland Ave
James Ave
Hall Ave
Standley Rd
Edgewood Dr
Kibble Rd
Kiser Rd
Canal Rd
Powers Rd
Chippewa Dr
Jefferson Ave
Tiffin Dr
Parker Dr
Ginter Rd
Carter R
GROUP 1 2008
GROUP 2 2007
GROUP 3 2008
GROUP 4 2009
GROUP 5 2010
GROUP 6 2010
GROUP 7 2017
GROUP 8 2018
GROUP 9 2019
GROUP 10 2016
GROUP 11 2020
GROUP 12 2014
GROUP 13 2021
GROUP 14 2012
GROUP 15 2013
GROUP 16 2024
GROUP 17 2023
GROUP 18 2022
GROUP 19 2025
GROUP 20 2026
DEFIANCE
a great place to live
ARCADIS
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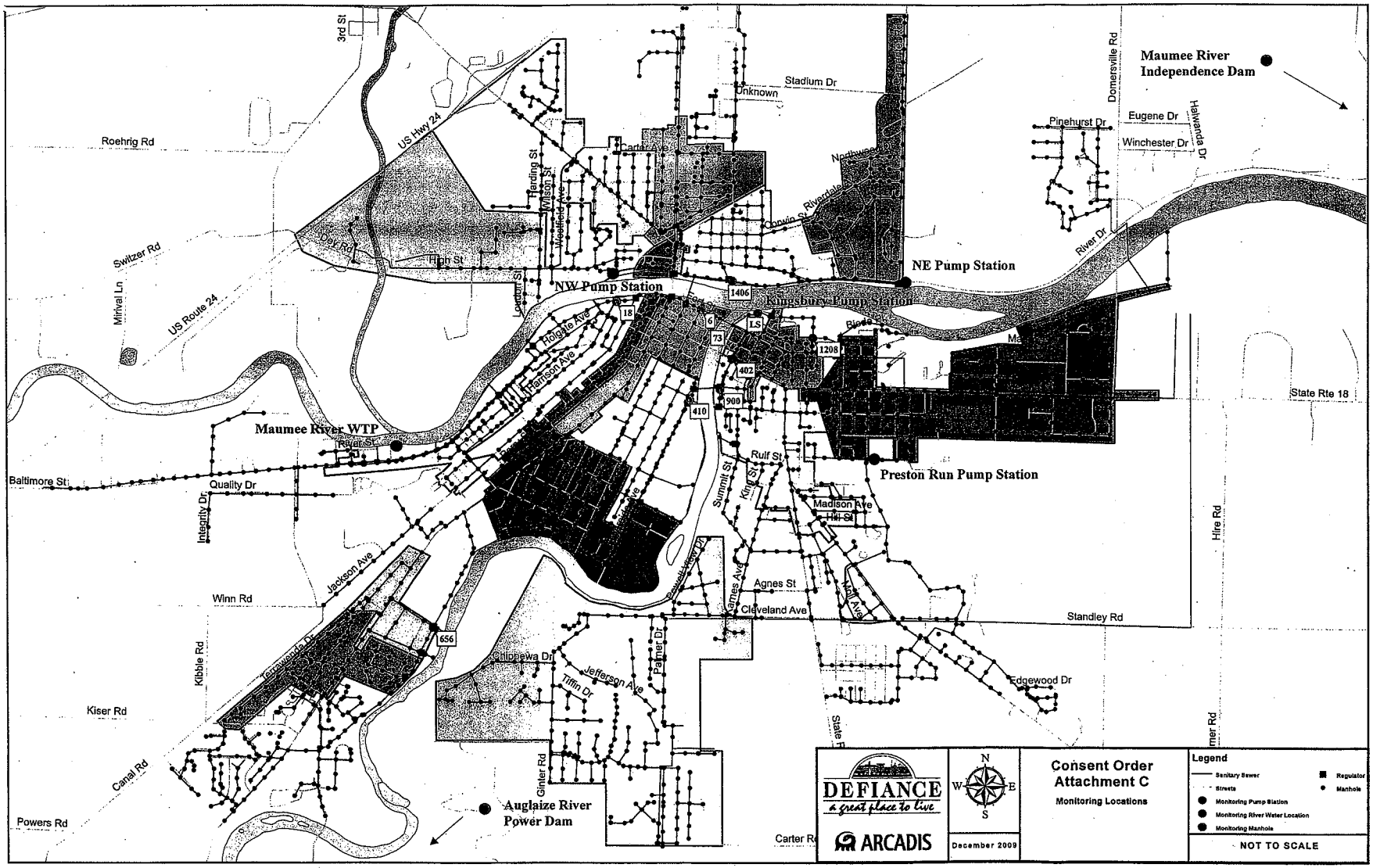
December 2009
Consent Order
Attachment B
Group
Year of Construction
Proposed Sewer Improvements
Sewer Rehabilitation
Legend
Streets
Sanitary Sewer
Regulator
Manhole
River Intrusion Areas
A: 2014
B: 2013
C: 2015
D: 2026
NOT TO SCALE



Maumee River Independence Dam
NE Pump Station
NW Pump Station
Kingsbury Pump Station
Preston Run Pump Station
Maumee River WTP
Auglaize River Power Dam
Roehrig Rd
US Hwy 24
US Route 24
Switzer Rd
Mirival Ln
Baltimore St
Quality Dr
Integrity Dr
Winn Rd
Kiser Rd
Kibble Rd
Canal Rd
Powers Rd
Jackson Ave
Terrawanda Dr
Stadium Dr
Unknown
Carter Ave
Harding St
Wilson St
Westfield Ave
Dey Rd
High St
Loudon St
Holgate Ave
Harrison Ave
River St
Rulf St
Summit St
King St
Madison Ave
Hill St
Agnes St
Cleveland Ave
Standley Rd
Edgewood Dr
Chippewa Dr
Jefferson Ave
Tiffin Dr
Palmer Dr
Ginter Rd
Carter Rd
State Rte 18
Hire Rd
Domersville Rd
Pinehurst Dr
Eugene Dr
Winchester Dr
Halwanda Dr
River Dr
Riverdale
Nordhaven
Conwin St
Biede
1406
18
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73
LS
1208
402
900
410
656
DEFIANCE
a great place to live
ARCADIS
N
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W
December 2009
Consent Order
Attachment C
Monitoring Locations
Legend
Sanitary Sewer
Streets
Monitoring Pump Station
Monitoring River Water Location
Monitoring Manhole
Regulator
Manhole
NOT TO SCALE