

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

UNITED STATES OF AMERICA

and

THE STATE OF INDIANA,

Plaintiffs,

3:09CV128 WTL-WGH

v.

THE CITY OF EVANSVILLE, INDIANA,

and

EVANSVILLE WATER AND SEWER  
UTILITY BOARD,

Defendants.

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**CONSENT DECREE**

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WHEREAS, prior to the lodging of this Consent Decree, Plaintiffs, the United States of America, by the authority of the Attorney General and through its undersigned counsel acting at the request and on behalf of the Administrator of the Environmental Protection Agency (“U.S. EPA”), and the State of Indiana, on behalf of the Indiana Department of Environmental Management (“IDEM”), filed an amended complaint (the “Complaint”) in this civil action against the City of Evansville, Indiana and the Evansville Water and Sewer Utility Board (“Defendants”);

WHEREAS, in their Complaint seeking injunctive relief and civil penalties pursuant to Sections 309 and 504 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319 and 1364 and Indiana law, the United States and the State of Indiana allege that Defendants have violated Section 301 and 504 of the CWA, 33 U.S.C. §§ 1311 and 1364, Title 13 of the Indiana Code, Title 327, Article 5 of the Indiana Administrative Code, and Defendants’ National Pollutant Discharge Elimination System Permits (“NPDES Permits”) issued pursuant to the CWA for two Waste Water Treatment Plants (“WWTPs”) known as the “East WWTP” and “West WWTP” in a variety of ways;

WHEREAS, the United States, the State of Indiana, and Defendants recognize the need for the coordination of the requirements of this Consent Decree, as they relate to Defendants’ plan for reducing and eliminating Discharges from the Defendants’ Combined Sewer Overflow Outfalls, and the State of Indiana’s water quality standards, including review and revision of those standards, if warranted, in accordance with the CSO Control Policy, 59 Fed. Reg. 18688, 18694 - 18695 (April 19, 1994) and Indiana law;

WHEREAS, Defendants assert that since 2004 they have invested over \$100 million to upgrade sewer infrastructure, eliminate constructed sanitary sewer discharge points, reduce

chronic neighborhood flooding which will lessen discharges from the sewer system, and increase the capacity of its wastewater treatment plants;

WHEREAS, the United States, the State of Indiana, and Defendants recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid prolonged and complicated litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section II, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

**I. OBJECTIVES**

1. The objectives of this Consent Decree are for Defendants to take steps necessary to comply with the CWA, Indiana Code § 13-30-2-1, the regulations promulgated under those laws, and the NPDES Permits.

**II. JURISDICTION AND VENUE**

2. For purposes of this Consent Decree, the Parties agree that this Court has jurisdiction over the subject matter of this action and over the Parties to this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, CWA Sections 309(b) and 504, 33 U.S.C. §§ 1319(b), 1364; the Complaint states claims upon which relief may be granted against Defendants under Section 309 of the CWA, and Title 327 of the IAC, Articles 2 and 5, for injunctive relief and civil penalties and under Section 504 of the CWA for injunctive relief; authority to bring this action on behalf of the United States is vested in the Department of Justice (“DOJ”) pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519; and authority to

bring this action on behalf of the State of Indiana is vested in the Office of the Attorney General of Indiana pursuant to 327 IAC 5-2-20 and Ind. Code §§ 4-6-3-2, 13-30-4-1 and 13-14-2-6.

3. For purposes of this Consent Decree, the parties agree that venue is proper in this District pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), CWA Section 504, 33 U.S.C. § 1364, and 28 U.S.C. §§ 1391(b) and 1395(a).

### **III. PARTIES BOUND**

4. This Consent Decree applies to and is binding upon the United States, the State, and Defendants, acting through their officers, directors, employees and agents, and upon Defendants' successors and assigns. To the extent allowed by Fed. R. Civ. P. 65(d)(2), the injunctive relief provisions of this Consent Decree are binding upon officers, agents, servants and employees, and are binding upon those parties in active concert or participation with them and their officers, agents, or employees who receive actual notice of this Consent Decree with respect to all matters related to the performance of this Consent Decree. In any action to enforce the terms of this Consent Decree, Defendants shall not raise as a defense the failure of any person or entity provided for in Fed. R. Civ. P. 65(d)(2) to take any actions necessary to comply with the terms of the Consent Decree. Nothing in this paragraph prevents the Defendants from invoking Section XI of this Decree (Force Majeure).

5. Transfer of Ownership and Operation. From the Date of Lodging of this Consent Decree until its termination, Defendants shall give written notice and provide a copy of this Consent Decree to any person or entity to whom they have or may transfer ownership and operation of the East WWTP or West WWTP and/or any portion of the Sewer Systems for each of those plants.

6. Defendants shall condition any transfer of ownership and operation of the East WWTP or West WWTP, and/or the Sewer Systems for those plants, in whole or in part, upon the transferee's agreement 1) to enter into a modification to this Consent Decree that shall make the transferee subject to all terms and conditions of the Consent Decree which apply to the ownership of the transferred assets, and 2) to petition IDEM for an appropriate NPDES Permit modification or transfer. At least 60 Days prior to the projected date for the transfer of ownership and operation, Defendants shall notify Plaintiffs, in accordance with Section XIV of this Consent Decree (Notices and Submissions), of the prospective transfer and shall provide them with: 1) a copy of the draft motion to modify the Consent Decree; 2) the request for an NPDES Permit modification or transfer; and 3) information sufficient to demonstrate that the prospective transferee has the technical and financial qualifications to fulfill Defendants' obligations and liabilities under this Consent Decree. If the United States and/or the State of Indiana oppose the motion and the Court finds that the transferee does not have the financial and/or technical ability to assume Defendants' obligations and liabilities under the Decree, Defendants shall not be released from the obligations and liabilities of this Consent Decree despite the transfer of ownership and operation.

7. Following the Date of Lodging of this Consent Decree, upon approval by Defendants of any contract relating to work to be performed pursuant to this Consent Decree, Defendants shall provide a copy of this Consent Decree to each contractor retained to perform that work, or advise the firm in writing that a copy of the Consent Decree is available on Defendant's homepage. For firms already retained by Defendants to perform work under this Decree prior to the Date of Lodging, Defendants shall make a copy of this Consent Decree available no later than thirty (30) Days after the Date of Lodging. Any action taken by a

contractor or consultant retained to fulfill any of the responsibilities under this Consent Decree shall be considered an action of Defendants for purposes of determining compliance with this Consent Decree.

#### **IV. DEFINITIONS**

8. Unless otherwise defined herein, the terms used in this Consent Decree (and any attachments thereto) shall have the meaning given to those terms in the CWA, 33 U.S.C. §§ 1251, *et seq.*, and the regulations promulgated there under, or, if not defined in the CWA or its regulations, then as defined in Title 327 of the IAC, Article 5. Whenever the following terms are used in this Consent Decree, the following definitions shall apply:

a. “Building/Property Backup” means a wastewater release and backup into a building or onto property that is caused by blockages, flow conditions, or other conditions in the Sewer Systems. A wastewater backup or release that is caused solely by conditions in a Private Service Connection Lateral is not a Building/Property Backup for purposes of this Decree.

b. “Bypass” as that term is defined in 40 C.F.R. § 122.41(m) means the intentional diversion of waste streams from any portion of a WWTP

c. “Capacity Management Operation and Maintenance Program” (or “CMOM Program”) shall mean the program that Defendants will develop pursuant to Section VI.F of this Consent Decree.

d. “Combined Sewer Overflow” or “CSO” means any Discharge from any Outfall identified as a CSO Outfall in Defendants’ Current Permits. A list of Defendants’ CSO Outfalls is provided as Appendix A to this Consent Decree.

e. "Combined Sewer Overflow Control Policy" or "CSO Control Policy" means the U.S. EPA policy found at 59 Fed. Reg. 18688 (April 19, 1994).

f. "CSO Operational Plan" or "CSOOP" means Defendants' plan approved by Plaintiffs, including any subsequent annual updates or revisions to the plan approved by Plaintiffs, for implementing, *inter alia*, the Nine Minimum Controls contained in the CSO Control Policy.

g. "Combined Sewer System" or "CSS" means the portions of Defendants' Sewer Systems that are designed to convey municipal sewage (domestic, commercial and industrial wastewaters) and storm water runoff through a single-pipe system to Defendants' WWTPs or to CSO Outfalls. Defendants CSS includes both the CSS for the East WWTP ("East CSS") and the CSS for the West WWTP ("West CSS").

h. "Combined Sewer System Release" or "CSS Release" means a release of wastewater from the CSS at a point source not specifically identified in Appendix A.

i. "Complaint" means the complaint filed by the United States and the State of Indiana in this action.

j. "Consent Decree" or "Decree" means this Consent Decree and all appendices attached hereto (listed in Section XXVI).

k. "Date of Entry" means the date of entry of this Decree by the Court after satisfaction of the public notice and comment procedures of 28 C.F.R. § 50.7 and Section XXIV of this Decree (Public Comment).

l. "Date of Lodging" means the date the Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Southern District of Indiana.

- m. "Day" means a calendar day.
- n. "Defendants" shall mean the City of Evansville, Indiana and the Evansville Water and Sewer Utility Board.
- o. "Discharge" means any "discharge of a pollutant" as defined in 40 C.F.R. § 122.2 and 327 IAC 5-1.5-11.
- p. "East WWTP" means the WWTP owned by Defendants and located between Southland Drive and Shawnee Drive in Evansville, Indiana which receives waste waters from the East CSS and East SSS.
- q. "Excessive I/I" is defined by 40 C.F.R. § 35.2005(b)(16).
- r. "Food Establishment" means any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used commercially for handling food.
- s. "Force Main" means any pipe that receives and conveys wastewater under pressure from the discharge side of a pump.
- t. "Gravity Sewer Segment" or "Sewer Segment" means pipes that receive, contain and convey wastewater not normally under pressure, but intended to flow unassisted under the influence of gravity, including trunk sewers.
- u. "IDEM" means the Indiana Department of Environmental Management and any successor departments or agencies of the State of Indiana.
- v. "Improvements" shall mean any capital expenditures that Defendants shall plan and/or implement as part of either the Long Term Control Plan or the Sewer System and Wastewater Treatment Plants Remedial Measures Plan ("SSRMP") contained in Defendants' Integrated Overflow Control Plan ("IOCP").
- w. "Infiltration" is defined by 40 C.F.R. § 35.2005(b)(20).

- x. "Inflow" is defined by 40 C.F.R. § 35.2005(b)(21).
- y. "I/I" means the total quantity of water from Inflow, Infiltration and rain-induced infiltration without distinguishing the source.
- z. "Integrated Overflow Control Plan" or "IOCP" means a system-wide capital improvement plan that is prepared in accordance with the requirements of Appendix C to this Consent Decree and that consists of a CSO Long Term Control Plan ("LTCP") and an SSS Remedial Measures Plan ("SSSRMP").
  - aa. "Long Term Control Plan" or "LTCP" means the long term control plan for the East CSS and East WWTP and West CSS and West WWTP developed by Defendants in accordance with the requirements of Appendix C to this Consent Decree.
  - bb. "Maximum Treatable Flow Rate" means the flow rate identified in Defendants' most current CSOOP approved by Plaintiffs pursuant to Section XV (Review and Approval Procedures), or the flow rate identified in any stress tests conducted by the Defendants and approved by the Plaintiffs pursuant to Section XV (Review and Approval Procedures), subsequent to the most current approved CSOOP and prior to the next approved CSOOP.
  - cc. "MGD" means a flow rate expressed in millions of gallons per Day. A flow rate for a shorter period of time, such as an hour, may also be expressed in MGD. For example, a flow of one million gallons in an hour would be equivalent to a daily flow rate of 24 MGD.
  - dd. "NPDES Permits" or "Current Permits" means Defendants' National Pollutant Discharge Elimination System permits numbered IN0032956 (West WWTP, issued September 18, 2006) and IN0033073 (East WWTP, issued September 18, 2006), or such permits that succeed these permits issued and in effect at a relevant time.

ee. "Outfall" means a type of "point source" (as that term is defined in Section 501(14) of the CWA, 33 U.S.C. § 1361(14)) that serves as a Discharge point from Defendants' Sewer Systems. "Outfall" followed by an Arabic numeral means the Outfall assigned that number in either of Defendants' NPDES Permits for the East WWTP or the West WWTP.

ff. "Paragraph" means a portion of this Decree identified by an Arabic numeral.

gg. "Parties" means the United States, the State, and Defendants.

hh. "Plaintiffs" means the United States and the State.

ii. "Private Service Connection Lateral" means a portion of each of the Sewer Systems, not owned by Defendants, used to convey wastewater from a building or buildings to that portion of the Sewer Systems owned by Defendants.

jj. "Pump Station" means a facility comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that Pump Station.

kk. "Sanitary Sewer Overflow" or "SSO" means any Discharge to waters of the State or United States from Defendants' Sanitary Sewer Systems through point sources not specified in any NPDES Permit, as well as any release of wastewater from Defendants' Sanitary Sewer Systems to public or private property that does not reach waters of the State or the United States, such as a release to a land surface or into a structure; provided, however, that such releases which are caused solely by conditions in a Private Service Connection Lateral are not SSOs for the purpose of this Consent Decree. As such, the term SSO includes Building/Property Backups caused in whole or in part by conditions in Defendants' Sanitary Sewer System.

ll. "Sanitary Sewer System" or "SSS" means all portions of Defendants' Sewer Systems that are not a part of Defendants' Combined Sewer Systems. Defendants' SSS includes both the SSS for the East WWTP ("East SSS") and the SSS for the West WWTP ("West SSS").

mm. "Section" means a portion of this Decree identified by a Roman numeral.

nn. "Sewer Systems" shall mean the wastewater collection and conveyance systems owned or operated by Defendants (including all pipes, Force Mains, Gravity Sewer Segments, Pump Stations, manholes, and appurtenances thereto) that are designed to collect and convey municipal sewage (domestic, commercial, or industrial) to the East WWTP or West WWTP or to a CSO Outfall. The term Sewer Systems includes both the CSS and SSS for the East WWTP and the CSS and SSS for the West WWTP. The term Sewer Systems does not include any Private Service Connection Lateral.

oo. "Sewershed" means a major portion of the Sewer Systems that drains to one or a limited number of Gravity Sewer Segments.

pp. "State" means the State of Indiana, acting on behalf of IDEM.

qq. "SSS Remedial Measures Plan" ("SSSRMP") means a prioritized set of improvements designed in accordance with the requirements of Appendix C to this Consent Decree.

rr. "Typical Year" means the precipitation volume, frequency, duration and intensity that occurred in 2000, as identified in Evansville's Typical Precipitation Year Evaluation Report.

ss. "United States" means the United States of America, acting on behalf of U.S. EPA, or any successor to U.S. EPA.

tt. "U.S. EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

uu. "Waste Water Treatment Plants" or "WWTPs" means both the East WWTP and the West WWTP as defined in this Section.

vv. "West WWTP" means the WWTP owned by Defendants and located on South Tekoppel Avenue in Evansville, Indiana which receives waste waters from its West CSS and West SSS.

## **V. GENERAL COMPLIANCE REQUIREMENTS**

9. **Permit Compliance.** Defendants shall comply with all terms and conditions of the NPDES Permits.

10. Defendants shall submit all monthly Discharge Monitoring Reports and attachments to U.S. EPA at the same time they are submitted to IDEM.

## **VI. PROHIBITIONS AND OPERATION/MAINTENANCE MEASURES**

### **A. Prohibition on Dry Weather Overflows, SSOs and CSS Releases.**

11. Dry weather overflows are prohibited from any Outfall.

12. SSOs and CSS Releases are prohibited.

### **B. SSO, CSS Release, and Dry Weather Overflow Reporting.**

13. If a dry weather overflow, an SSO, or a CSS Release occurs, Defendants shall report the following information to IDEM orally within twenty-four (24) hours and to Plaintiffs in writing within five (5) Days:

a. The date, location, duration, estimated volume, and causes(s), if known, of the dry weather overflow, SSO or CSS Release;

- b. The street address (or location) at which the dry weather overflow, SSO or CSS Release occurred;
- c. Identification of the sub-basin and the Sewer Segment in which dry weather overflow, SSO or CSS Release occurred, if known;
- d. All remedial actions undertaken or to be undertaken to mitigate the effects of the dry weather overflow, SSO or CSS Release and to prevent its recurrence.

**C. Installation of Overflow Alarm Systems on Each Pump Station.**

14. No later than February 29, 2012, Defendants shall install an alarm system at each pump station in the CSSs and SSSs that will notify Defendants' personnel of when a high wet well level condition is occurring at the pump station.

**D. Revisions to CSO Operational Plan (“CSOOP”).**

15. Attachment A, Section III.B to Defendants' NPDES Permits for the East WWTP and West WWTP requires Defendants to annually evaluate and, if necessary, update its CSOOP, starting twelve (12) months from the effective date of the NPDES Permits. By November 1<sup>st</sup> of each calendar year, Defendants shall submit an annual update to its CSOOP to Plaintiffs pursuant to Section XIV of this Consent Decree (Notices and Submissions). Defendants shall conform the annual update to the CSOOP to the requirements of Attachment A, Section III.B of each NPDES Permit and to the CSO Control Policy.

16. Plaintiffs shall review each of Defendants' annual updates to the CSOOP in accordance with Section XV of this Consent Decree (Review and Approval Procedures).

17. Defendants shall implement the approved CSOOP and any approved updates to the CSOOP in accordance with Section XV of this Consent Decree (Review and Approval Procedures).

**E. Maximizing Existing Flow and Storage Capacity of the Sewer Systems and Existing Treatment Capacity of the East WWTP and West WWTP.**

18. Defendants shall operate the East WWTP and the West WWTP at the Maximum Treatable Flow Rates.

a. West WWTP. From the Date of Lodging Defendants shall not Discharge from CSO 123 when the flow rate into the West WWTP is less than the Maximum Treatable Flow Rate for the West WWTP.

b. East WWTP. From the Date of Lodging Defendants shall not Discharge from CSO Outfall 103 when the flow rate into the East WWTP is less than the Maximum Treatable Flow Rate for the East WWTP.

**19. East WWTP Early Action Upgrade and Revised Maximum Treatable Flow Rate.**

No later than March 1, 2012, Defendants shall upgrade the East WWTP to increase capacity through the entire East WWTP and submit a revision to the Maximum Treatable Flow Rate for both the primary and secondary treatment systems at the East WWTP. This upgrade shall consist of the following projects:

a. Defendants shall conduct a study of the effectiveness of the step feed and contact stabilization modes of operation in the secondary aeration basins to maximize wet weather flow through the secondary treatment system. By no later than November 1, 2011, Defendants shall submit to Plaintiffs a report presenting the results of this study for review and approval by Plaintiffs pursuant to Section XV (Review and Approval Procedures). The report shall also describe a wet weather operating plan that incorporates step feed and contact stabilization modes, as appropriate, into the wet weather operations of the East WWTP. Upon submittal of the wet weather operation plan, the Defendants shall immediately implement the wet

weather operation plan and shall make any changes, if applicable, required by Plaintiffs pursuant to Section XV (Review and Approval Procedures).

b. No later than March 1, 2012, Defendants shall install a second bar screen in the headworks. This bar screen shall be designed for a minimum capacity of 20 MGD.

c. No later than March 1, 2012, Defendants shall install a fourth influent pump that shall increase the pumping rate to match the flow rate capacity of the East WWTP, and shall also ensure adequate back-up influent pumping capacity is available at the East WWTP in the event that an influent pump is unavailable due to maintenance work or equipment failure.

d. By no later than November 1, 2011, Defendants shall submit a stress test protocol for each treatment step (preliminary, primary, secondary and disinfection) at the East WWTP to determine the Maximum Treatable Flow Rates of each treatment step, following the Early Action Upgrades described above. Plaintiffs shall review the stress test protocol pursuant to Section XV of this Decree (Review and Approval Procedures). In accordance with that review and by no later than July 31, 2012, Defendants shall conduct the approved stress test. The stress test shall identify Maximum Treatable Flow Rates for each treatment step, and an overall Maximum Treatable Flow Rate for full treatment at the East WWTP while utilizing both the conventional secondary aeration basins (in step feed and/or contact stabilization modes).

e. By no later than July 31, 2012, Defendants shall submit to the Plaintiffs for review and approval pursuant to Section XV of this Decree (Review and Approval Procedures), the results of the stress test required in subparagraph (d), above, including the Maximum Treatable Flow Rates for each treatment step, and a proposed revision to the overall Maximum Treatable Flow Rate for full treatment at the East WWTP. The Maximum Treatable Flow Rate through primary treatment should achieve no less than 40 MGD. Upon submittal of

the stress test results, Defendants shall operate the WWTP in accordance with the proposed Maximum Treatable Flow Rate for full treatment, and shall make any changes to the Maximum Treatable Flow Rate, as required by Plaintiffs pursuant to Section XV (Review and Approval Procedures). Defendants shall include the revised Maximum Treatable Flow Rate in the next CSOOP update, and shall either summarize or attach the stress test report to the CSOOP.

20. West WWTP Early Action Upgrade and Revised Maximum Treatable Flow.

a. Defendants shall conduct an operational study of the 7th Avenue Pump Station with respect to discharges from CSO 009 and the maximization of flow to the West WWTP. This study will evaluate the hydraulic relationship between the 7<sup>th</sup> Avenue Pump Station, the West WWTP, and other gravity sewer lines that feed the force main between the 7th Avenue Pump Station and the West WWTP. Based on this study, Defendants shall develop a 7th Avenue Pump Station Wet Weather Operating Plan (either as a stand-alone document or as part of the West WWTP Wet Weather Operating Plan) that defines the operation of the 7<sup>th</sup> Avenue Pump Station to maximize flow to the West WWTP, minimize discharges from CSO 009, and avoid system flooding during wet weather events. Defendants shall submit the West WWTP Wet Weather Operating Plan to the Plaintiffs for review and approval pursuant to Section XV (Review and Approval Procedures) by January 31, 2011. Upon submittal of the West WWTP Wet Weather Operating Plan, Defendants shall immediately implement the West WWTP Wet Weather Operating Plan and shall make any changes, if applicable, required by Plaintiffs pursuant to Section XV (Review and Approval Procedures). Any Discharges from Outfall 009 that are not in accordance with the 7th Avenue Pump Station Wet Weather Operating Plan are prohibited.

b. By no later than April 30, 2011, Defendants shall install baffles in the secondary treatment system clarifiers to increase flow through the clarifier. By no later than November 1, 2011, Defendants shall submit to the Plaintiffs pursuant to Section XV (Review and Approval Procedures) a report presenting the Maximum Treatable Flow Rate through the West WWTP secondary treatment clarifiers. Defendants shall operate the West WWTP at this flow immediately upon submission of this report.

c. Defendants shall conduct a study of the effectiveness of the step feed and contact stabilization modes of operation in the secondary aeration basins to maximize wet weather flow through the secondary treatment system. By no later than November 1, 2011, Defendants shall submit to Plaintiffs for review and approval pursuant to Section XV (Review and Approval Procedures) a report presenting the results of this study for review and approval by Plaintiffs pursuant to Section XV (Review and Approval Procedures). The report shall also describe a wet weather operating plan that incorporates step feed and contact stabilization, as appropriate, into the wet weather operations of the West WWTP. Upon submittal of the wet weather operation plan, the Defendants shall immediately implement the wet weather operation plan and shall make any changes, if applicable, required by Plaintiffs pursuant to Section XV (Review and Approval Procedures).

d. By no later than November 1, 2011, Defendants shall submit a stress test protocol for all treatment steps (preliminary, primary, secondary and disinfection) at the West WWTP to determine the Maximum Treatable Flow Rates of each treatment step. Plaintiffs shall review the stress test protocol pursuant to Section XV of this Decree (Review and Approval Procedures). In accordance with that review and by no later than July 31, 2012, Defendants shall conduct the approved stress test. The stress test shall identify Maximum Treatable Flow Rates

for each treatment step, and an overall Maximum Treatable Flow Rate for full treatment at the West WWTP while utilizing both the conventional secondary aeration basins (in step feed and/or contact stabilization modes) and the BAF system.

e. By no later than July 31, 2012, Defendants shall submit to the Plaintiffs for review and approval pursuant to Section XV of this Decree (Review and Approval Procedures), the results of the stress test required in subparagraph (d), above, including the Maximum Treatable Flow Rates for each treatment step, and a proposed revision to the overall Maximum Treatable Flow Rate for full treatment at the West WWTP (assuming use of both secondary treatment processes--the convention aeration basins and the Biological Aerated Filter System). Upon submittal of the stress test results, Defendants shall operate the WWTP in accordance with the proposed Maximum Treatable Flow Rate for full treatment, and shall make any changes to the Maximum Treatable Flow Rate as required by Plaintiffs pursuant to Section XV (Review and Approval Procedures). Defendants shall include the revised Maximum Treatable Flow in the next CSOOP update, and shall either summarize or attach the stress test report to the CSOOP.

21. Defendants shall make maximum use of the transport and storage capacity of their Sewer Systems, in accordance with the approved CSOOP, to minimize the frequency and volume of CSO Discharges during wet weather events.

**F. Capacity, Management, Operation and Maintenance Program (“CMOM Program”) for Defendants’ Sanitary Sewer Systems.**

22. Defendants shall develop a CMOM Program in three phases, known as CMOM Program 2.0, CMOM Program 2.1, and CMOM Program 3.0. Pursuant to Section XIV (Notices and Submissions), Defendants shall submit CMOM Program 2.0 on May 1, 2011; CMOM Program 2.1 on February 29, 2012; and CMOM Program 3.0 on November 30, 2012. Each

subsequent CMOM Program submittal shall include each previous CMOM submittal, such that

CMOM Program 3.0 includes the requirements of CMOM Program 2.0 and CMOM Program

2.1. The purpose of the CMOM Program is to provide for the proper operation and maintenance of equipment while minimizing failures, malfunctions, and line blockages that could contribute to SSOs and CSS Releases.

*i. CMOM Program 2.0*

23. By no later than May 1, 2011, Defendants shall submit to Plaintiffs for review and approval pursuant to Section XV of this Consent Decree (Review and Approval Procedures) a CMOM Program 2.0 for the East SSS and West SSS consistent with subparagraphs (a) – (j) below. Defendants' CMOM Program shall include:

a. An update to Defendants' August 2009 *Sewer Overflow Response Plan* ("SORP") as described in Section VI.G of this Consent Decree (Sewer Overflow Response Plan);

b. List of Critical Components: Defendants shall prepare and submit to Plaintiffs for review and comment: (i) a list of critical components for the WWTPs and the collection systems, and (ii) a plan for promptly obtaining and maintaining redundancy or backups for these critical components;

c. Back-Up Equipment Inventory: Defendants shall prepare and submit to Plaintiffs for review and comment an updated inventory of back-up equipment (or spare parts) maintained by EWSU at the WWTPs and throughout its collection systems. Such list shall be accessible to collection system maintenance workers;

d. Provisions for the control of Fats, Oils and Grease (A "FOG Program") in Sewer Segments by cleaning or other effective methods, including procedures for controlling and

attempting to prevent the introduction of FOG to the system, and the identification of areas where FOG blockages have recurred and areas where introduction of FOG to the system is likely. The FOG Program to be submitted with CMOM Program 2.0 shall also include, at a minimum: (i) the establishment and annual updating of a database of Food Establishments in the service area that are sources of FOG; (ii) requirements that Food Establishments clean out grease control equipment at intervals appropriate to maintain grease capture effectiveness, and keep records of the dates and amounts of grease removed, and explain how and where the grease was disposed; (iii) procedures for notice to new Food Establishment owners and operators about the requirement to perform the actions required pursuant to (ii) and under (iii), above;

e. Provisions for the control of roots in Sewer Segments by chemical, mechanical, hydraulic or other effective methods, including procedures for the method and frequency of treatment, and the identification of problem areas where root blockages have recurred;

f. For 25% of pump stations in the Sewer System: (i) an inventory of Defendants' pump stations, including the design, equipment, operation and maintenance procedures, and redundancy of pumps and electrical power supply; (ii) an assessment of the adequacy of the pump station compliance with Chapter 40, "Wastewater Pumping Stations" of the most recent edition of "Recommended Standards for Wastewater Facilities" by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (commonly known as the "Ten State Standards"); (iii) for those pump stations not in compliance with the Ten States Standards, the actions required to achieve such compliance, and a schedule to implement these actions; and (iv) a power outage response plan consistent with the

Ten State Standards sufficient to operate the pump station at its rated capacity, as well as operate all ancillary equipment and instrumentation necessary to prevent Releases;

g. Procedures for periodic inspections and maintenance of pump stations to ensure that all necessary parts are in good working order;

h. A description of the capabilities of Defendants' data management system and the degree to which it is currently used to manage maintenance data for both Sewer Systems including sample outputs such as routine work schedule summaries and work orders;

i. A maintenance data management system that has the capability of scheduling and tracking and distinguishing between preventative and reactive maintenance activities;

j. Provisions for Cleaning and Inspecting Sewer Pipes. These provisions shall include:

(i) a process for identifying Sewer Segments that are "hot spots" where blockages have occurred on a repeat basis, and a schedule for frequent cleaning of these areas;

(ii) a schedule for cleaning and inspecting all 8-inch through 15-inch Sewer Segments by November 1, 2017, with 70% of the cleaning and inspection completed by November 1, 2015 and with cleaning and inspection completed on at least 75 miles per year using asset management principles;

(iii) a schedule for repeat cleaning and inspection of all 8-inch through 15-inch Sewer Segments at a rate of 75 miles per year based on asset management principles, such that all 8-inch through 15-inch Sewer Segments are cleaned and inspected by no later than ten years after the last complete cleaning cycle, until termination of this Consent Decree pursuant

to Section XXIII (Termination); however, any new Sewer Segments constructed in accordance with the design standards approved as part of CMOM Program 3.0 during the course of a cleaning cycle need not be cleaned until the following cleaning cycle;

(iv) A manhole inspection program that ensures that all manholes in the Sewer System are inspected for obvious structural defects at a frequency consistent with the Sewer System cleaning schedule in this Paragraph 23.j and that ensures that appropriate repairs are made to such manholes to reduce exfiltration and infiltration;

(v) A plan for more frequent, proactive inspections of Sewer Segments that have been identified as segments in which blockages have occurred repeatedly, using closed circuit television or other appropriate inspection techniques approved in the CMOM Program required in this Section VI.F of the Consent Decree;

(vi) Reactive investigation, including inspection techniques such as closed circuit televising if the cause(s) is (are) not readily determined, of Sewer Segments in which an SSO (including Building/Property Backup) or a CSS Release has occurred to determine the cause(s) of the blockage. If closed circuit televising is necessary to determine the cause, then Defendants shall perform the closed circuit televising within ten (10) Days of the event; and

(vii) Routine inspections of all Pump Stations to ensure that all components at such stations are in proper working order;

ii. CMOM Program 2.1

24. By no later than February 29, 2012, Defendants shall submit to Plaintiffs for review and approval pursuant to Section XV of this Consent Decree (Review and Approval Procedures) a CMOM Program 2.1 for the East SSS and West SSS consistent with subparagraphs (a) – (c) below. Defendants' CMOM Program 2.1 shall include:

a. The requirements of CMOM Program 2.0;

b. For 50% of pump stations in the Sewer System (not including the 25% of pump stations included CMOM Program 2.0): (i) an inventory of Defendants' pump stations, including the design, equipment, operation and maintenance procedures, and redundancy of pumps and electrical power supply; (ii) an assessment of the adequacy of the pump station compliance with Chapter 40, "Wastewater Pumping Stations" of the most recent edition of "Recommended Standards for Wastewater Facilities" by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (commonly known as the "Ten State Standards"); (iii) for those pump stations not in compliance with the Ten States Standards, the actions required to achieve such compliance, and a schedule to implement these actions; and (iv) a power outage response plan consistent with the Ten State Standards sufficient to operate the pump station at its rated capacity, as well as operate all ancillary equipment and instrumentation necessary to prevent Releases.

c. A demonstration that Defendants have completed installation of the alarm systems required under Section VI.C. of this Consent Decree (Installation of Overflow Alarm Systems on Each Pump Station), and procedures for ensuring a prompt response to such overflow events, and to ensure that each pump station overflow event is reported in accordance with the reporting requirements of this Consent Decree and Defendants' NPDES permits.

*iii. CMOM Program 3.0*

25. By no later than November 30, 2012, Defendants shall submit to Plaintiffs for review and approval pursuant to Section XV of this Consent Decree (Review and Approval Procedures) a CMOM Program 3.0 for the East SSS and West SSS consistent with subparagraphs (a) – (f) below. Defendants' CMOM Program 3.0 shall include:

- a. The requirements of CMOM Program 2.0 and CMOM Program 2.1;
- b. Sewer Use Ordinances, nontransferable FOG permits, or some other enforceable mechanism authorized by the approved pretreatment program, that impose specific requirements for the installation or upgrade and maintenance of grease control equipment on new and existing Food Establishments that are sources of FOG;
- c. Enforcement procedures for non-compliant Food Establishments, including escalating steps for repeat non-compliance, and authority to impose monetary penalties and injunctive relief consistent with Defendants' approved enforcement response plan as part of its approved pretreatment program pursuant to Section 307 of the Clean Water Act, 33 U.S.C. § 1317;
- d. Periodic and random inspections of Food Establishments to determine compliance with FOG requirements, with inspections occurring at least once every five years, and with at least 40% of Food Establishments' grease control measures inspected every two consecutive years;
- e. Procedures for testing or otherwise ensuring that new or recently rehabilitated Sewer Segments and connections are properly designed and constructed to prevent misalignments or other physical impediments to flow that would cause or contribute to SSOs, CSS Releases, and/or new connections of storm water inflow;
- f. For all pump stations in the Sewer System: (i) an inventory of Defendants' pump stations, including the design, equipment, operation and maintenance procedures, and redundancy of pumps and electrical power supply; (ii) an assessment of the adequacy of the pump station compliance with Chapter 40, "Wastewater Pumping Stations" of the most recent edition of "Recommended Standards for Wastewater Facilities" by the Great

Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (commonly known as the “Ten State Standards”); (iii) for those pump stations not in compliance with the Ten States Standards, the actions required to achieve such compliance, and a schedule to implement these actions; and (iv) a power outage response plan consistent with the Ten State Standards sufficient to operate the pump station at its rated capacity, as well as operate all ancillary equipment and instrumentation necessary to prevent Releases.

26. In addition to the requirements of paragraphs 23-25, CMOM Program 3.0 shall be consistent with good engineering judgment and applicable portions of Section 2 of U.S. EPA’s *Guide for Evaluating CMOM Programs at Sanitary Sewer Collection Systems*, EPA 305-B-05-002 (January 2005)(“CMOM Guide”).

27. Each CMOM Program 2.0, 2.1 and 3.0 submittal approved by Plaintiffs pursuant to Section XV (Review and Approval Procedures), and all subsequent revisions so approved, shall immediately become incorporated into and enforceable under this Consent Decree. Defendants shall implement each approved CMOM Program submittal in accordance with the schedules and deadlines contained therein.

28. Update Data System for Tracking Operating and Maintenance Activities. By July 31, 2011, Defendants shall track, using an electronic data management system, operating and maintenance activities, including causes of SSOs, CSS releases and Building/Property Backups.

**G. Sewer Overflow Response Plan.**

29. Defendants shall update the Sewer Overflow Response Plan (“SORP”), submitted to Plaintiffs on June 30, 2010, in two phases: SORP 1.0 and SORP 2.0. Pursuant to Section XIV of this Consent Decree (Notices and Submissions), Defendants shall submit SORP 1.0 on December 1, 2010 and SORP 2.0 on May 1, 2011. SORP 2.0 shall include SORP 1.0.

*i. SORP 1.0*

30. By no later than December 1, 2010, Defendants shall submit to Plaintiffs for review and approval pursuant to Section XV of this Consent Decree (Review and Approval Procedures) SORP 1.0, which shall include the requirements of (a) through (c), below:

- a. a consistent methodology for categorizing and documenting the causes of SSOs, CSS releases and Building/Property Back-ups for incorporation into the existing DataStream system;
- b. a description of Defendants' procedures for responding to Building/Property Backups, including the timeframe for responses; the measures for cleanup of Building/Property Backups; and the measures taken (such as backflow preventer and/or grinding pump installation program) to correct or repair conditions in the Sewer Systems causing or contributing to Building/Property Backups; and
- c. a description of Defendants' SSO and CSS Release reporting procedures and inclusion of forms and processes used for SSO and CSS Release data collection;

31. Upon U.S. EPA's and IDEM's approval of SORP 1.0 pursuant to Section XV of this Consent Decree (Review and Approval Procedures), Defendants shall fully implement approved procedures within thirty (30) Days and thereafter provide U.S. EPA, at the address specified in Section XIV of this Consent Decree (Notices and Submissions), with copies of each report sent to the State at the same time such report is provided to the State.

*ii. SORP 2.0*

32. By no later than May 1, 2011, Defendants shall submit to Plaintiffs for review and approval pursuant to Section XV of this Consent Decree (Review and Approval Procedures) SORP 2.0, which shall include the requirements of (a) through (h), below:

a. Defendants' approach to providing prompt notice to the public (through the local news media or other means, including signs or barricades to restrict access) of an SSO or CSS Release where the public may come into contact with such Release, and a description of actions that Defendants will take to promptly provide such notice (during normal business hours and off-hours)

b. For Building/Property Backups, how building and property owners can report backups, including a description of the methods for communicating with customers about how to report Building/Property Backups;

c. A discussion of how Defendants will communicate information to building occupants and property owners on the risks associated with backups and how to safely and effectively clean up or to obtain clean up services;

d. With the exception of Building/Property Backups, which are addressed in subparagraph (b), above, specific information on the standard operating procedures to be followed by Defendants personnel in responding to an SSO or CSS Release, including clean-up measures and measures to be taken to detect and correct the cause(s) of the SSOs and CSS Releases;

e. Defendants' plan to minimize the overflow by limiting upstream flow to the pipe segment (or structure) at which the event is occurring;

f. Standard methods for estimating the volume of sewage released during an SSO or CSS Release event;

g. Description of Defendants' practices for training Sewer System staff on reporting procedures and documentation of customer complaints, with the result being that all SSOs and CSS Releases are reported to Plaintiffs in a timely fashion and as required by the

Permits; and

h. A plan to ensure the preparedness of Defendants employees, contractors, and personnel of other affected agencies necessary to implement the SORP, including but not limited to responsiveness training that identifies the various levels of training to be provided, the personnel who will receive each type of training, and the frequency at which the training will be provided.

33. SORP 2.0 shall include SORP 1.0 and shall be incorporated into the Defendants' CMOM Program 2.0 submitted for review and approval pursuant to Section XV of this Consent Decree (Review and Approval Procedures). SORP 2.0 shall describe in detail Defendants' SSO and CSS Release reporting, data tracking, cause determination, public notification, and training procedures. Further, SORP 2.0 shall ensure that Defendants' practices, including but not limited to its training of Sewer System staff on reporting procedures and documentation of customer complaints, result in the reporting of all SSOs and CSS Releases to Plaintiffs in a timely fashion and as required by the NPDES Permits. Defendants shall identify in the SORP the procedures for timely and complete reporting to occur.

## **VII. INTEGRATED OVERFLOW CONTROL PLAN DEVELOPMENT AND IMPLEMENTATION**

### **A. Integrated Overflow Control Plan.**

34. In accordance with the schedule in Appendix B hereto, Defendants shall develop an Integrated Overflow Control Plan ("IOCP") as set forth in Appendix C.

35. In scheduling improvements, the IOCP shall give priority to those Improvements and other remedial measures necessary to prevent or minimize Discharges and CSS Releases to sensitive areas identified in Appendix E. In addition, the IOCP shall include an analysis of the impact of the IOCP on environmental justice populations, including the schedule for

implementation, in accordance with EPA's Environmental Justice Strategy (April 1995), and Presidential Executive Order 12898. The IOCP schedule shall require that the design and construction of all Improvements and other remedial measures described in the IOCP shall be implemented as expeditiously as practicable and by no later than May 31, 2032, unless Defendants make the demonstration set forth in Paragraphs 42-48 of this Decree (IOCP Schedule Reconsideration Based on Financial Circumstances).

36. Plaintiffs shall review and approve the schedule and list of Improvements and remedial measures contained in the IOCP in accordance with Section XV (Review and Approval Procedures) of this Consent Decree.

**B. Completion and Implementation of the LTCP.**

37. As part of their IOCP, Defendants, in accordance with the schedule and requirements in Appendix B and Appendix C, shall complete the development of their LTCP which shall provide for the design, construction and implementation of all Improvements to the East WWTP and East CSS, and the West WWTP and West CSS, and other measures necessary to minimize the number, duration and volume of CSO Discharges. Further, based on hydraulic models approved by Plaintiffs, the LTCP shall ensure that any CSO Discharges that do occur comply with the technology-based and water quality-based requirements of the CWA, state law and regulation, and Defendants' NPDES Permits. The Plaintiffs shall review the items required by Appendix B and C, in accordance with Section XV of this Decree (Review and Approval Procedures).

38. After completing development of the LTCP, Defendants shall submit to Plaintiffs pursuant to Section XIV (Notices and Submissions) the LTCP in accordance with the Appendix B schedule. Among other things, the LTCP shall describe the results of the Public and

Regulatory Agency Program implemented in accordance with Section A of Appendix C, and the details of the planning and assessment process implemented in accordance with Section E of Appendix C, in accordance with U.S. EPA's May 1995 "Combined Sewer Overflows: Guidance for Long Term Control Plan," and using sound engineering judgment. The LTCP shall include: (i) a description of the selected control/treatment measures; (ii) a schedule for the design, construction, and implementation of the improvements to the WWTPs and the Sewer Systems, and any other required measures; and (iii) a description of the post-construction compliance monitoring program to be implemented, including an evaluation of the effectiveness of CSO controls in reducing CSO frequency and volume, as well as the water quality impacts of any remaining CSO Discharges and CSS Releases to receiving streams. Plaintiffs shall review and approve the schedule and the list of Improvements and other remedial measures contained in the LTCP portion of the IOCP in accordance with Section XV. (Review and Approval Procedures) of this Consent Decree.

39. Following the approval, the Defendants shall fully implement the LTCP in accordance with the approved schedule, which schedule shall not exceed May 31, 2032, unless the Plaintiffs agree that the demonstration in Paragraphs 42-48 has been made for an extension to the schedule, or unless the Court finds, following Defendants' invocation of the dispute resolution procedures in Section XII, that such a demonstration has been made.

**C. Development and Implementation of the Sewer Systems and Wastewater Treatment Plants Remedial Measures Plan ("SSRM Plan").**

40. In addition to the LTCP, under Defendants' IOCP they shall study the capacity limitations of their East Sewer System and their West Sewer System, and shall develop and submit for approval to the Plaintiffs a plan as required in Appendices B and C. The process shall include the performance of a Sewer Systems Evaluation Study ("SSES") on prioritized areas of

the East and West Sewer Systems (and submission of an SSES Work Plan), the submission of a Sewer Systems Evaluation Study Report for the prioritized areas (“SSES Report”), the performance and submission of a Capacity Assessment (for the East SSS and East CSS, and the West SSS and West CSS), the development and submission of a Sanitary Sewers and WWTP Remedial Measures Plan (or Plans) (“SSRM Plan”), an Update of Defendants’ Financial Capability Analysis, and the implementation of the SSRM Plan(s).

**D. Submission and Implementation of IOCP (with the SSRM Plan(s) and the LTCP).**

41. In accordance with the schedule in Appendix B and the requirements in Appendix C, Defendant shall prepare and submit to the Plaintiffs for review and approval the IOCP (including the SSRM Plan and the LTCP). Plaintiffs shall review and approve the schedule and list of Improvements and other remedial measures in the IOCP in accordance with Section XV (Review and Approval Procedures). Defendants shall commence implementation of the Improvements and other remedial measures in the IOCP in accordance with the schedule contained therein. If a dispute resolution proceeding is pending over the length of the schedule when Defendants submit the proposed IOCP, Defendants shall proceed promptly to commence implementation of the IOCP pending resolution of the dispute. Once the dispute is resolved, if Plaintiffs prevail, the schedules in the IOCP shall be revised accordingly.

**E. IOCP Schedule Reconsideration Based on Financial Circumstances.**

42. The schedule for completion of construction of all Improvements and other remedial measures under the IOCP shall be as expeditious as practicable, but in no event later than May 31, 2032, unless Defendants demonstrate in their updated Financial Capability Analysis (to be submitted on or before January 31, 2012, in accordance with Appendix B), that the expected per household cost of the Improvements and other remedial measures included in

the IOCP will cause Defendants' cost per household to exceed 2.5% of the Median Household Income ("MHI") for the Defendants' entire service area, calculated using EPA's "Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development," EPA 8320B-97-004, published February 1997.

43. The schedule extension request must be provided at the same time as the updated Financial Capability Assessment due on or before January 31, 2012, and must include, a demonstration, complete with supporting documentation, that:

a. The Residential Indicator, when calculated in accordance with EPA's Financial Capability Assessment Guidance as modified by the requirements of Paragraph 45 below and using the inputs described and defined in Paragraph 45 of this Section, and using a reasonable engineering estimate of the remaining costs of completing construction of the IOCP expressed in the value of dollars during the year that Defendants submit the schedule extension request, but excluding the cost of the Post-Construction Monitoring Program, exceeds 2.5%;

b. A description of each requirement and associated deadline in the approved IOCP schedule for which Defendants seek an extension; and

c. Each request for a deadline extension on IOCP projects is as short as reasonably possible, but in no event more than five years after the deadline for completing the specified project in the approved IOCP schedule.

44. To determine Defendants' MHI as required by paragraph 42, Defendants shall use MHI data for the most recent year from either the Federal Census or American Community Survey ("ACS"), whichever is the most current. If the most current ACS data includes both a one-year estimate and a three-year estimate of MHI, Defendants shall use the one-year estimate to determine their MHI, although the Defendants may also submit an MHI figure based on the

three-year estimate of MHI under the ACS.

45. To calculate and determine Defendants' Residential Indicator at the time a schedule extension request is submitted, Defendants shall use the following inputs:

a. Current wastewater and sewer annual operation and maintenance expenses calculated as total expenses less depreciation in Defendants' Comprehensive Annual Financial Report ("CAFR") for the most recent year, but only if the CAFR accurately states Defendants' operation and maintenance expenses. If Defendants' CAFR for the most recent year either does not exist or does not accurately state their operation and maintenance expenses, Defendants shall calculate and determine this input with appropriate accounting records, including source documents, and submit to Plaintiffs copies of the accounting records and source documents;

b. Current wastewater and sewer annual debt service calculated as the total principal and interest payments on bonds and notes from the financing activities section of the cash flow statement in Defendants' CAFR for the most recent year, but only if the CAFR accurately reflects the principal and interest payments. If Defendants' CAFR for the most recent year either does not exist or does not accurately state Defendants' principal and interest payments, Defendants shall calculate and determine this input with appropriate accounting records, including source documents and submit to Plaintiffs copies of the accounting records and source documents;

c. Reasonable documented engineering estimates projecting the increase in operation and maintenance expenses expected after completing construction of Defendants' IOCP, expressed in value of dollars for the year during which Defendants submit the schedule extension request;

d. The annual capital costs based on the expected financing of a reasonable,

documented engineering estimate of the costs of completing construction of Defendants' IOCP expressed in the value of dollars during the year that Defendants submit the schedule extension request. To support Defendants' calculation of this input, Defendants shall submit to Plaintiffs an explanation of the basis for, and calculation of, the annual cost estimate and the engineering estimates, accounting records, and source documents on which Defendants relied to calculate this input;

e. When calculating Defendants' residential share of wastewater treatment costs in accordance with EPA's CSO Financial Capability Assessment Guidance, Defendants shall use the most recent year of Federal Census or ACS data and billing data regarding Defendants' customer base not reflected in such data. Defendants also shall use the same ratio between total wastewater flow and residential infiltration and inflow that Defendants use for rate setting purposes, if any, to calculate the residential share of wastewater treatment costs.

f. When calculating the total number of households in Defendants' service area, Defendants shall count each single family house, and each unit in multi-family housing structures such as apartment buildings and duplexes as one household, but shall not count households that have onsite sewage disposal systems. To the extent that customers billing data does not accurately reflect the number of units in multi-family housing structures, Defendants shall use ACS and Federal Census data to more accurately estimate the total number of households in Defendants' service area.

46. In addition to the calculation of the Residential Indicator as required in Paragraph 45(a) through (f), Defendants may submit an additional calculation of the Residential Indicator using alternative inputs that Defendants contend produce a more accurate calculation of the Residential Indicator, provided such inputs are consistent with EPA's "Combined Sewer

Overflows Guidance for Financial Capability Assessment and Schedule Development," EPA 8320B-97-004, published February 1997.

47. If either the United States or Indiana denies in writing Defendants' request for an extension for completing any of the deadlines in the approved IOCP, in whole or in part, or if more than 90 Days elapses from the date that Defendants submit their request for an extension, and Defendants have not either: (1) received a written denial of Defendants' schedule extension request from either the United States or Indiana; or (2) entered into a written agreement pursuant to this Subsection VII.E. (IOCP Schedule Reconsideration Based on Financial Circumstances), Defendants may pursue dispute resolution pursuant to Section XII of this Consent Decree (Dispute Resolution).

48. If Defendants invoke the dispute resolution procedures of Section XII of this Decree (Dispute Resolution) for a denial of its request for a schedule extension, the invocation of dispute resolution procedures shall not extend, postpone, or affect in any way any of Defendants' obligations pursuant to this Consent Decree unless and until final resolution of the dispute so provides.

**F. Compliance Achievement Demonstration Following IOCP Implementation.**

49. After implementing all Improvements and other remedial measures described in the Agency-approved IOCP, Defendants shall demonstrate compliance with: (1) the performance measures in the IOCP, and (2) the technology-based and water quality-based requirements of the CWA, state law and regulation, and the applicable provisions of its NPDES Permits, by implementing the Post-Construction Compliance Monitoring Program portion of their approved LTCP as required under Section I.10 of Appendix C, in accordance with the LTCP schedule. If the results of the Post-Construction Compliance Monitoring Program do not demonstrate

compliance, within one hundred eighty (180) Days of receiving notice from Plaintiffs that compliance has not been demonstrated, or a different time period agreed to by the Plaintiffs, Defendants shall submit to Plaintiffs pursuant to Section XIV (Notices and Submissions) a Supplemental Compliance Plan which describes the additional improvements and/or other remedial measures that Defendants shall take to achieve compliance, and a proposed schedule for taking such actions. Upon approval by the Plaintiffs pursuant to Section XV of this Consent Decree (Review and Approval Procedures), Defendants shall implement the Supplemental Compliance Plan in accordance with the schedule specified in the approved Plan.

### **VIII. CIVIL PENALTY**

50. Civil Penalty. Within 30 Days after the Date of Entry, Defendants shall pay a total of \$490,000.00 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at a rate specified in 28 U.S.C. § 1961 as of the date of lodging, as follows:

a. Defendants shall pay the United States the sum of \$420,000.00 as a civil penalty. The payment to the United States shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with instructions to be provided to Defendants, following the Date of Entry of the Consent Decree, by the Financial Management Unit of the U.S. Attorney’s Office for the Southern District of Indiana. At the time of payment, Defendants shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in this case, and shall reference the civil action number and DOJ case number 90-5-1-1-08738, to the Plaintiffs in accordance with Section XIV of this Decree (Notices and Submissions), by email to acctsreceivable.CINWD@epa.gov and by mail to:

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

b. Defendants shall pay the State the sum of \$70,000.00 as a civil penalty.

The payment to the State shall be made by a check made payable to "Indiana Department of Environmental Management Special Fund," delivered to:

Indiana Department of Environmental Management  
Cashier's Office – Mail Code 50-10C  
100 N. Senate Avenue  
Indianapolis, IN 46204-2251

At the time of payment, Defendants shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference the above-captioned case name and civil action number and DOJ case number 90-5-1-1-08738) to the Plaintiffs in accordance with Section XIV of this Consent Decree (Notices and Submissions).

d. If Defendants fail to tender either of the payments required in this Section, interest shall accrue in accordance with the provisions of 31 U.S.C. § 3717.

e. By paying civil penalties and implementing supplemental environmental projects, the Defendants do not release Environmental Management Corporation and will not dismiss their third party action for damages (specifically including these civil penalties and the costs of the supplemental environmental projects) while Environmental Management Corporation was a co-permittee and/or engaged in the operation and management of the Evansville WWTPs and Sewer System.

## **IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

51. Defendants shall implement a Supplemental Environmental Project (or "SEP") - the Cave Avenue and Fickas Road Septic Systems Project - in accordance with the provisions in Appendix F, which is attached hereto and incorporated into this Decree by reference. The

purpose of the SEP is to ensure that certain homes currently served by septic systems are connected to the Sewer System. Defendants shall complete construction of the required sewer extensions described in Appendix F by no later than December 1, 2012. After extending sewer lines into the two areas, Defendants shall cause all homeowners with septic systems to connect to the new sewer lines by no later December 1, 2015.

52. Defendant is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. "Satisfactory completion" shall mean that all homes in the specified areas in Appendix F are connected to the Sewer System. Defendants may use contractors or consultants in planning and implementing the SEP.

53. With regard to the SEP, Defendants certify the truth and accuracy of each of the following:

a. that all cost information provided to U.S. EPA and IDEM in connection with their approval of the SEP is complete and accurate and that Defendants in good faith estimate that the projected cost to implement the SEP (exclusive of inventory on hand, overhead, additional employee time and salary, administrative expenses, legal fees, and contractor oversight) will range between \$4 million and \$6.5 million.

b. that, as of the date of executing this Decree, Defendants are not required to perform or develop the SEP by any federal, state, or local law or regulation, and are not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that Defendants were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Defendants have not received, and will not receive credit for the SEP

in any other enforcement action; and

e. that Defendants will not receive any reimbursement for any portion of the SEP from any other person, except as permitted by Paragraph 50.e.

54. SEP Construction Completion Report and Implementation Completion Report

a. By no later than January 31, 2013, Defendants shall submit a SEP Construction Completion Report to U.S. EPA and IDEM, in accordance with Section XIV of this Decree (Notices and Submissions). The Report shall contain the following:

i. a detailed description of the SEP as constructed;

ii. a description of any problems encountered in completing construction of the SEP and the solutions thereto;

iii. an itemized list of all eligible SEP costs expended; and

iv. a description of Defendants' plan to ensure that all homeowners in the Cave Avenue and Fickas Road area, not already connected, will connect to the new sewers by no later than December 1, 2015.

b. No later than December 31, 2015, Defendants shall submit a SEP Implementation Completion Report to update Plaintiffs on their success in ensuring that all property owners in the Cave Avenue and Fickas Road areas have properly abandoned their septic systems and have connected to the Defendants' Sewer System. If not all property owners have met these requirements, Defendants shall explain what steps they shall take to ensure that the remaining homeowners promptly meet these requirements.

c. If the construction or implementation of the SEP has not been satisfactorily completed in accordance with all schedules, stipulated penalties may be assessed under Paragraph 73 of the Decree.

55. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section XII of the Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

56. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Section XIII (Consent Decree Reporting Requirements) of this Decree.

57. Any public statement, oral or written, in print, film, or other media, made by Defendants making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States and State of Indiana v. the City of Evansville and Evansville Water and Sewer Utility, C.A. 3:09-cv-0128- WTL-WGH, taken on behalf of the U.S. Environmental Protection Agency and the Indiana Department of Environmental Management under the Clean Water Act, and applicable State law."

## **X. STIPULATED PENALTIES**

58. Defendants shall be liable for stipulated penalties to the United States and the State in the amounts set forth in this Section for violations of this Consent Decree as specified below, unless excused under Section XI of this Consent Decree (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree and within the specified time schedules established by or approved under this Decree.

59. Failure to Revise CSOOP: The following stipulated penalty shall accrue for failure to submit a revision to the CSOOP in accordance with Subsection VI.D of this Consent Decree:

\$1,000 per Day

60. Failure to Implement Provisions of the CSOOP: The following stipulated penalty shall accrue for any violation of a requirement contained in the approved CSOOP, as required by Subsection VI.D of this Consent Decree:

\$1,000 per Day

61. Failure to Maximize Flow and Storage in the Sewer System to Minimize Wet Weather CSO Discharges: The following stipulated penalty shall accrue when a Discharge from a CSO Outfall occurs as a result, in whole or in part, of Defendants' failure to maximize flow through and/or storage in the Sewer Systems, as required by Subsection VI.E of this Consent Decree:

\$2,000 per Day

62. Failure to Maximize Treatable Flow at the WWTPs to Minimize Wet Weather CSO Discharges: The following stipulated penalties shall accrue when a CSO Discharge occurs from CSO Outfalls 103 and/or 123 when the associated WWTP was not meeting the requirements in Section VI.E, or when CSO Outfall 009 Discharges in a manner not in accordance with the 7<sup>th</sup> Avenue Pump Station Wet Weather Operating Plan submitted in accordance with paragraph 20.a.:

\$2,000 per Day per CSO Discharge.

63. Dry Weather Overflows: The following stipulated penalties shall accrue per Day for any Dry Weather Overflow:

\$4,000 per Day, per CSO Discharge

64. Failure to Meet Dates Contained in Appendix B (Consent Decree Implementation Schedule): The following stipulated penalty shall apply for Defendants' failure to meet any of

the scheduled dates for submission of deliverables or completion of projects set forth in Appendix B (or any alternative dates mutually agreed upon by the Parties) with the exceptions of the LTCP submittal, the IOCP final submittal and the completion of full implementation of the IOCP:

1 <sup>st</sup> to 30 <sup>th</sup> day	\$1,000 per Day
30 <sup>th</sup> to 60 <sup>th</sup> day	\$2,000 per Day
61 <sup>st</sup> Day of violation and each Day thereafter	\$3,000 per Day

65. Failure to Submit an LTCP or the Final IOCP: The following stipulated penalties shall apply for any violation of the requirements regarding the completion and submittal of an LTCP or the final IOCP in accordance with the requirements of Subsection VII.B and Appendix C of this Consent Decree:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30 <sup>th</sup> Day of violation	\$2,000 per Day per violation
31 <sup>st</sup> Day of violation and each Day thereafter	\$4,000 per Day per violation

66. Failure to Meet Dates Contained in Paragraphs 19 and 20: The following stipulated penalties shall accrue if Defendants fail to complete any requirement in Paragraphs 19 or 20 related to the East WWTP or West WWTP in accordance with the schedule contained in those paragraphs:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1 <sup>st</sup> to 30 <sup>th</sup> Day of violation	\$1,000 per Day per violation
31 <sup>st</sup> Day of violation and each Day thereafter	\$4,000 per Day per violation

67. Failure to Implement the Requirements of the Approved IOCP: The following stipulated penalties shall accrue for the failure to timely implement any requirement in the approved IOCP:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1 <sup>st</sup> to 30th Day of violation	\$2,000 per Day per violation
31 <sup>st</sup> Day of violation and each Day thereafter	\$4,000 per Day per violation

68. SSOs, CSS Releases and prohibited bypass: The following stipulated penalties shall accrue for each SSO, CSS Release and/or prohibited bypass which occurs that reached a water of the United States or a water of the State of Indiana:

<u>Volume of SSO, CSS Release or Prohibited</u>	<u>Bypass Penalty</u>
Less than 1,000 gallons	\$1000
1,000 to 10,000 gallons	\$4,000
Greater than 10,000 gallons	\$8,000

69. SSOs and CSS Releases that Do Not Reach Waters of the United States or Water of the State: The following stipulated penalties shall accrue for each SSO or CSS Release which occurs that does not reach a water of the United States or a water of the State of Indiana, provided that Defendants were not in compliance with CMOM Program 2.0, CMOM Program 2.1, or CMOM Program 3.0 and/or SORP 1.0 and SORP 2.0 at the time of such event:

<u>Volume of SSO or CSS Release</u>	<u>Penalty</u>
Less than 1,000 gallons	\$1000
1,000 to 10,000 gallons	\$4,000
Greater than 10,000 gallons	\$8,000

70. Failure to Comply with the Approved CMOM Program Requirements: The following stipulated penalty shall apply for any failure to comply with any requirement contained in the approved CMOM Program developed under Subsection VI.F of this Consent Decree:

\$1,000 per Day, per requirement

71. Failure to Submit and/or Implement the Approved SORP: The following stipulated penalty shall apply for failing timely to submit a revision of the SORP, under Subsection VI.G of this Consent Decree, and/or to implement any requirement of the approved SORP:

\$2,000 per Day

72. Noncompliance with Reporting Requirements: Unless addressed in another paragraph of this Section, the following stipulated penalties shall accrue for each noncompliance with any requirement that Defendants submit to the Plaintiffs any work plan, report, or any other submission under this Consent Decree:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$500 per Day per violation
31st to 60th Day of violation	\$1,000 per Day per violation
61 <sup>st</sup> Day of violation and each Day thereafter	\$3,000 per Day per violation.

73. SEP Compliance

a. If Defendants fail to complete the SEP construction in accordance with the requirements of Appendix F by no later than December 1, 2012 Defendants shall pay:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1 <sup>st</sup> for 30 <sup>th</sup> Day	\$1,000 per Day

31st Day and each subsequent Day \$2,000 per Day

b. If Defendants fail to complete implementation of the SEP in accordance with Paragraph 54 Defendants shall pay \$100 per day for every residential property that has not connected to Defendants' Sewer System.

74. Other Violations: The following stipulated penalty shall accrue for each noncompliance with any other requirement of the Consent Decree:

\$500 per Day

75. Defendants shall pay any stipulated penalty within thirty (30) Days of receiving a written demand by either Plaintiff. Either the United States, or the State, or both may elect to demand stipulated penalties under this Section, however, the United States and the State shall consult with each other before making any demand. Where both sovereigns demand stipulated penalties, any such penalties determined to be owing shall be paid 50% percent to the United States and 50% percent to the State. Where only one Plaintiff demands stipulated penalties, the entire amount of stipulated penalties determined to be owing shall be payable to that sovereign. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff. In no case shall the determination by one sovereign not to seek stipulated penalties preclude the other sovereign from seeking stipulated penalties in accordance with this Consent Decree. A decision by the United States or the State to waive, in whole or in part, penalties otherwise due under this Section shall not be subject to judicial review.

76. All stipulated penalties shall begin to accrue on the Day after the performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until

performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

77. Notwithstanding any other provision of this Consent Decree, for any stipulated penalty paid pursuant to Paragraph 69, Defendants do not intend any express or implied waiver of any governmental immunity under applicable law in any third party action regarding the same transaction or occurrence for which the Defendants have made the stipulated penalty payment. Further, in making such payment, Defendants make no admission of fact or law.

78. Penalty Accrual During Dispute Resolution. Stipulated penalties shall continue to accrue during any dispute resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961 (for penalties payable to the United States) and at the rate established pursuant to Indiana Code Section 24-4.6-1-101 (for penalties payable to the State), but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of a Plaintiff that is not appealed to this Court, accrued penalties determined to be owing shall be paid within thirty (30) Days of the agreement or the receipt of the decision or order;

b. If the dispute is appealed to this Court and the United States and/or Indiana substantially prevail, Defendants shall, within sixty (60) Days of receipt of the District Court's decision or order, pay all accrued penalties determined by the Court to be owing, together with accrued interest, except as provided in Paragraph 78(c) below;

c. If the District Court's decision is appealed by any Party, Defendants shall within fifteen (15) Days of receipt of the Court of Appeals' decision pay all accrued penalties determined to be owing, together with accrued interest.

79. Payment of Stipulated Penalties to the United States.

a. Payment. Stipulated penalties payable to the United States shall be paid by certified or cashier's check in the amount due, payable to the "Treasurer, United States of America," referencing the above-captioned case name and civil action number and DOJ No. 90-5-1-1-08738, and shall be delivered to the Financial Litigation Unit of the Office of the United States Attorney for the Southern District of Indiana, at the following address:

Financial Litigation Unit  
Office of the United States Attorney  
Southern District of Indiana  
10 West Market Street, Suite 2100  
Indianapolis, IN 46204-3048

b. Late Payment. Should Defendants fail to pay stipulated penalties and accrued interest payable to the United States in accordance with the terms of this Consent Decree, Defendants shall be liable for interest on such penalties as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due, together with the costs (including attorneys fees) incurred in any action necessary to collect any such stipulated penalties, interest, or late payment costs or fees.

80. Payment of Stipulated Penalties to the State.

a. Payment. Stipulated penalties payable to the State shall be paid by certified or cashier's check in the amount due, payable to the "Indiana Department of Environmental Management Special Fund," delivered to:

Indiana Department of Environmental Management  
Cashier's Office – Mail Code 50-10C  
100 N. Senate Avenue  
Indianapolis, IN 46204-2251

b. Late Payment. Should Defendants fail to pay stipulated penalties and accrued interest payable to the State in accordance with the terms of this Consent Decree, the State shall be entitled to collect interest and late payment costs and fees, as set forth in Paragraph

79.b (Late Payment) together with the costs (including attorneys fees) incurred in any action necessary to collect any such stipulated penalties, interest, or late payment costs or fees.

81. Subject to the provisions of Section XVIII of this Consent Decree (Effect of Settlement and Reservation of Rights), the stipulated penalties provided in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State for Defendants' violation of this Consent Decree, applicable laws or regulations, and applicable permits.

## **XI. FORCE MAJEURE**

82. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, their agents, consultants and contractors, or any entity controlled by Defendants that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree. In addition, failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree, or failure of Defendants to approve contracts, shall not, in any event, be considered "Force Majeure" events.

83. When Defendants know or if Defendants should know, by the exercise of reasonable diligence, of an event that might delay completion of any requirement of this Consent

Decree, whether or not the event is a Force Majeure event, Defendants shall provide notice to Plaintiffs orally or by electronic or facsimile transmission within five (5) Days after Defendants first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. Within twenty-one (21) Days thereafter, Defendants shall provide in writing to Plaintiffs an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in its opinion, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of Force Majeure for that event for the period of time for such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstances of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

84. If Plaintiffs agree that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by Plaintiffs for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. Plaintiffs will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

85. If Plaintiffs do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, Plaintiffs will notify Defendants in writing of its decision.

86. If Defendants elect to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), they shall do so no later than thirty (30) Days after receipt of Plaintiffs' notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 82 and 83, above. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to Plaintiffs or the Court.

## **XII. DISPUTE RESOLUTION**

87. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

88. Informal Dispute Resolution. Any dispute which arises under or with respect to this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States and the State a written Notice of Dispute in accordance with Section XIV (Notices and Submissions). Such Notice shall state clearly the matter in dispute. The period of informal negotiations shall not exceed forty-five (45) Days from the date the dispute arises, unless the Parties agree in writing to extend this period. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the

United States and the State shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

89. Formal Dispute Resolution.

a. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and Indiana, in accordance with Section XIV (Notices and Submissions) of this Decree, a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

b. The Plaintiffs shall serve their Statement of Position within forty-five (45) Days of receipt of Defendants' Statement of Position. The Plaintiffs' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Plaintiffs. The Plaintiffs' Statement of Position shall be binding on the Defendants unless Defendants file a motion for judicial review of the dispute in accordance with the following subparagraph.

c. Defendants may seek judicial review of the dispute by filing with the Court and serving on the Plaintiffs, in accordance with Section XIV of this Decree (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of Plaintiffs' Statement of Position pursuant to the preceding subparagraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved

for orderly implementation of the Consent Decree.

d. The Plaintiffs shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

90. Standard of Review. In any dispute brought under this Section XII (Dispute Resolution), Defendants shall have the burden of proof, and the standard and scope of review shall be that provided by applicable law; except, for any dispute regarding a submittal made pursuant to Section VII.E (IOCP Schedule Reconsideration Based on Financial Circumstances), Defendants shall have the burden of demonstrating, based on the administrative record, that the position of the United States and State is arbitrary and capricious or otherwise not in accordance with law.

91. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 78. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

### **XIII. CONSENT DECREE REPORTING REQUIREMENTS**

92. Semi-Annual Reporting. Following the Effective Date of the Decree, on each May 1 and November 1 until termination of this Consent Decree, Defendants shall submit to Plaintiffs at the address provided in Section XIV (Notice and Submissions) a Semi-Annual Report that contains the information necessary to determine Defendants' compliance with the

requirements of this Consent Decree. Such reports shall address the prior six month period (the March 1 report shall address the period from the prior July 1 through December 31) and the September 1 report shall cover the period from January 1 through June 30. Such reports shall follow the format set forth in Appendix D to this Decree.

93. In addition to the information identified in Appendix D, the Semi-Annual Reports shall include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and duration, and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of the violation cannot be fully explained at the time the report is due, Defendants shall so state in the report. Defendants shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day Defendants become aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendants of their obligation to provide the notice required by Section XI of this Consent Decree (Force Majeure).

94. The Semi-Annual Reports shall be certified in accordance with the "Certification Language" set forth in Paragraph 101 of Section XIV (Notices and Submissions).

95. Defendants shall not object to the accuracy, authenticity, and/or admissibility into evidence of any certified Semi-Annual Report in any proceeding to enforce this Consent Decree.

96. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the CWA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or requirement.

97. Any information provided pursuant to this Consent Decree may be used by the United States and Indiana in any proceeding to enforce the provisions of this Consent Decree and

as otherwise permitted by law.

#### **XIV. NOTICES AND SUBMISSIONS**

98. Unless otherwise specified herein, whenever notifications, reports, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

To the U.S. Department of Justice:

Chief, Environmental Enforcement Section  
U.S. Department of Justice -- DOJ No. 90-5-1-1-08738  
P.O. Box 7611  
Washington, D.C. 20044-7611

and

To U.S. EPA:

Chief, Water Enforcement and Compliance Assurance Branch (WCC-15J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

and

Regional Counsel (C-14J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

To the State:

To the Indiana Attorney General:

Chief, Environmental Section  
Office of the Attorney General  
Indiana Government Center South  
5<sup>th</sup> Floor  
402 West Washington Street  
Indianapolis, IN 46204

and

To IDEM:

Chief, Compliance Branch  
Indiana Department of Environmental Management  
Office of Water Quality, Mail Code 65-40  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

and

Office of Legal Counsel  
Mail Code 60-01  
100 North Senate Street  
Indianapolis, IN 46204-2251

To Defendants:

Director  
Evansville Water & Sewer Utility  
One N.W. Martin Luther King, Jr., #104  
Evansville, IN 47740

Corporation Counsel  
City of Evansville  
420 Main Street, Suite 1600  
Post Office Box 1065  
Evansville, IN 47706

99. Notices and submissions provided pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

100. If Defendants violate, or have reason to believe that they may violate, any requirement of this Consent Decree, Defendants shall notify the Plaintiffs of such violation and its likely duration, in writing, within ten (10) working Days of the Day one or both of the Defendants first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of the violation cannot be fully explained at the time the report is due, Defendants shall

so state in the report. Defendants shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day Defendants become aware of the cause of the violation.

Nothing in this Paragraph or the following Paragraph relieves Defendants of its obligation to provide the notice required by Section XI of this Consent Decree (Force Majeure).

101. Each notice or submission submitted by Defendants under this Consent Decree shall be signed by an official of the submitting Party and shall include the following "Certification Language:"

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

102. Any information provided pursuant to this Consent Decree may be used by the Plaintiffs in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### **XV. REVIEW AND APPROVAL PROCEDURES**

103. Following receipt of any report, plan, or other submission by Defendants under this Consent Decree, the Plaintiffs may do one of the following, in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

104. If the submission is approved pursuant to Paragraph 103(a), Defendants shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 103(b) or 103(c), Defendants shall, upon written direction from Plaintiffs, take all actions required by the approved plan, report, or other item that Plaintiffs determine are technically severable from any disapproved or conditionally approved portions, subject to Defendants' right to dispute only the specified conditions or the disapproved portions, under Section XII of this Decree (Dispute Resolution).

105. If the submission is disapproved in whole or in part pursuant to Paragraph 103(c) or 103(d) Defendants shall, within thirty (30) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendants shall proceed in accordance with the preceding Paragraph.

106. Any stipulated penalties applicable to the original submission, as provided in Section X of this Decree (Stipulated Penalties), shall accrue during the thirty (30) Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if Defendants submits a report, plan or other submission that fails to contain all of the required elements set forth in this Consent Decree (including all attachments to the Decree and documents incorporated by reference into the Decree), Defendants shall be deemed to have failed to make the submission. Where this Consent Decree requires a resubmission, if upon a resubmission, the report, plan or other submission is

disapproved by Plaintiffs, either in whole or in part, Defendants shall be deemed to have failed to resubmit such report, plan or other submission timely and adequately, unless Defendants invoke the Dispute Resolution Procedures set forth in Section XII, within thirty (30) Days after receiving notice of disapproval of the resubmission, and Plaintiffs' action is overturned pursuant to that Section. In the case of a submission that fails to contain all the required elements, stipulated penalties begin to accrue on the date the submission is due. In the case of a disapproved resubmission, stipulated penalties begin to accrue on the date Defendants receive written notice of disapproval.

#### **XVI. ACCESS TO INFORMATION AND DOCUMENT RETENTION**

107. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree at all reasonable times upon presentation of credentials to allow such representatives to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants; and
- d. assess Defendants' compliance with this Consent Decree.

108. Upon request, Defendants shall provide Plaintiffs or their authorized representatives splits of any samples taken by Defendants. Upon request, Plaintiffs shall provide Defendants splits of any samples taken by Plaintiffs.

109. Until five (5) years after the termination of this Consent Decree, Defendants shall retain all documents related to the design, construction, and performance of all control measures prescribed under the approved IOCP, including any underlying research, data, and communications. Defendants shall retain all other documents in accordance with the provisions of its applicable NPDES permits. Defendants shall instruct its contractors and agents to preserve all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of its obligations under this Consent Decree. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

110. At the conclusion of the information retention period provided in the preceding Paragraph, Defendants shall notify the United States and the State at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, Defendants shall deliver any such documents, records, or other information to Plaintiffs. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants asserts such a privilege, they shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a

description of the subject of the document, record, or information; and (f) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

111. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendants seeks to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2, Subpart B.

112. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

## **XVII. FAILURE OF COMPLIANCE**

113. The Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. § 1251 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits. Notwithstanding the Plaintiffs' review and approval of any documents submitted by Defendants pursuant to this Consent Decree, Defendants shall remain responsible for compliance with the terms of the CWA, applicable state law and regulations, the NPDES Permits, and this Consent Decree. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any

NPDES Permit shall neither affect nor postpone Defendants' duties and obligations as set forth in this Consent Decree.

#### **XVIII. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS**

114. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging.

115. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 114. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 114. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' WWTPs and Sewer Systems, whether related to the violations addressed in this Consent Decree or otherwise.

116. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the WWTPs or the Sewer Systems or Defendants' violations, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 114 of this Section.

117. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits, and Defendants' compliance with this Consent Decree shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein.

118. This Consent Decree does not limit or affect the rights of Defendants or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

119. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

120. Performance of the terms of this Consent Decree by Defendants is not conditioned on the receipt of any federal, State or local funds. Application for construction grants, state revolving loan funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications on the part of Defendants shall not be cause for extension of any required compliance date in this Consent Decree.

#### **XIX. COSTS**

121. The Parties shall each bear their own costs of litigation of this action, including attorneys' fees, except that the United States and State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

## **XX. EFFECTIVE DATE**

122. The Date of Entry of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded in the Court's docket.

## **XXI. RETENTION OF JURISDICTION**

123. The Court shall retain jurisdiction of this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering an order modifying this Decree, pursuant to Sections XII (Dispute Resolution) and XXII (Modifications), or effectuating or enforcing compliance with the terms of this Decree.

## **XXII. MODIFICATIONS**

124. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

125. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 90, the Party seeking modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## **XXIII. TERMINATION**

126. After Defendants have complied with all obligations under this Consent Decree, including but not limited to all requirements set forth in Sections V (General Compliance Requirements), VI (Prohibitions and Operation/Maintenance Measures), VII (Integrated

Overflow Control Plan Development and Implementation) and IX (Supplemental Environmental Projects) of this Decree, have paid the civil penalty contained in Section VIII (Civil Penalty), and all stipulated penalties accrued under Section X (Stipulated Penalties) which they did not successfully challenge under Section XII (Dispute Resolution), and have demonstrated satisfactory compliance with the requirements of this Consent Decree and the NPDES Permits for a period of one year, Defendants may file and serve upon the Plaintiffs a "Request for Termination of Consent Decree," with supporting documentation demonstrating that the conditions for termination set forth in this Section have been met.

127. Following the United States' and the State's receipt of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the State, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

128. If the United States after consultation with the State does not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section XII of this Decree. However, Defendants shall not seek Dispute Resolution of any dispute regarding termination, under Section XII (Dispute Resolution), until 60 days after service of its Request for Termination. Defendants shall have the burden of proof that the conditions for termination of the Decree have been satisfied. This Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court in accordance with Section XII (Dispute Resolution) of this Consent Decree.

#### **XXIV. PUBLIC COMMENT**

129. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of this Consent Decree.

#### **XXV. SIGNATORIES/SERVICE**

130. Each undersigned representative of Defendants, the State, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

131. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants hereby agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### **XXVI. INTEGRATION/APPENDICES**

132. This Consent Decree, its Appendices, the approved CSO Remedial Measures, the approved CSO Remedial Measures Implementation Schedule, the approved Post Construction Monitoring Program, the approved SSO Remedial Measures, approved SSO Remedial Measures

Implementation Schedule, and all other approved deliverables under this Consent Decree constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersede all prior agreements and understandings, whether oral or written. Other than the Appendices, the approved LTCP, the approved SSRMP, and all other deliverables required under this Consent Decree, which are attached to and incorporated in this Decree (or will be so incorporated when approved), no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

133. The following appendices are attached to and incorporated into this Consent Decree:

<u>“Appendix A”</u>	List of CSO Outfalls
<u>“Appendix B”</u>	Implementation Schedule
<u>“Appendix C”</u>	IOCP Requirements
<u>“Appendix D”</u>	Semi-Annual Report Format
<u>“Appendix E”</u>	Sensitive Area Determination
<u>“Appendix F”</u>	Supplemental Environmental Project

**XXVII. FINAL JUDGMENT**

134. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States, the State, and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

**SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.**

---

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned  
United States and the State of Indiana v. the City of Evansville, Indiana and Evansville Water  
and Sewer Utility Board, (S.D. Ind.)(3:09-cv-128- WTL-WGH):

**FOR THE UNITED STATES OF AMERICA**

DATE: \_\_\_\_\_

IGNACIA S. MORENO  
Assistant Attorney General  
Environment & Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

DATE: \_\_\_\_\_

LISA A. CHERUP  
ANDREW C. HANSON  
NIGEL B. COONEY  
Trial Attorneys  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-2802

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned  
United States and the State of Indiana v. City of Evansville and Evansville Water and Sewer  
Utility Board, (S.D. Ind.)(3:09-cv-128-WTL-WGH):

JOSEPH H. HOGSETT  
United States Attorney  
Thomas Kieper  
Assistant United States Attorney  
Southern District of Indiana  
10 West Market Street, Suite 2100  
Indianapolis, IN 46204-3048

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned  
United States and the State of Indiana v. City of Evansville, and Evansville Water and Sewer  
Utility Board, (S.D. Ind.)(3:09-cv-128-WTL-WGH):

DATE: \_\_\_\_\_

SUSAN HEDMAN  
Regional Administrator  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

DATE: \_\_\_\_\_

NICOLE CANTELLO  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned  
United States and the State of Indiana v. City of Evansville, Indiana and Evansville Water and  
Sewer Utility Board, (S.D. Ind.)(3:09-cv-128-WTL-WGH):

DATE: \_\_\_\_\_

CYNTHIA GILES  
Assistant Administrator  
for Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20004

DATE: \_\_\_\_\_

ALAN MORRISSEY  
Senior Attorney  
Water Enforcement Division  
US Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Indiana v. City of Evansville, and Evansville Water and Sewer Utility Board, (S.D. Ind.) (3:09-cv-128-WTL-WGH):

**FOR THE STATE OF INDIANA**

**INDIANA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

DATE: \_\_\_\_\_

Commissioner

Approved as to form and legality:

DATE: \_\_\_\_\_

BETH ADMIRE  
Attorney  
Indiana Department of Environmental Management  
100 North Senate Street  
P.O. Box 6015  
Indianapolis, IN 46206

Indiana Attorney General

DATE: \_\_\_\_\_

PATRICIA ORLOFF ERDMANN  
Chief Counsel for Litigation

Office of the Indiana Attorney General  
402 West Washington Street  
IGCS, 5<sup>th</sup> Floor  
Indianapolis, IN 46204

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Indiana v. City of Evansville, and Evansville Water and Sewer Utility Board, (S.D. Ind.)(3:09-cv-128-WTL-WGH):

**FOR THE CITY OF EVANSVILLE**

DATE: \_\_\_\_\_

Corporation Counsel  
City of Evansville  
420 Main Street, Suite 1600  
Post Office Box 1065  
Evansville, IN 47706

DATE: \_\_\_\_\_

**FOR THE EVANSVILLE WATER AND  
SEWER UTILITY**

President of the Board of Directors  
Evansville Water & Sewer Utility  
One N.W. Martin Luther King, Jr., #104  
Evansville, IN 47740

**CONSENT DECREE APPENDIX A: List of CSO Outfalls.**

NPDES PERMIT	OUTFALL	LOCATION	RECEIVING WATER
East	001	Bee Slough at Kentucky Ave 37° 56' 54.42" N; 87° 33' 30.10" W	Bee Slough
East	002	Bee Slough at Cass Ave 37° 57' 13.88" N; 87° 33' 51.13" W	Bee Slough
East	103	Junction Box Prior to East WWTP Headworks 37° 57' 43.45" N; 87° 34' 24.44" W	Ohio River
East	004	Bee Slough (Adams, K-4) 37° 57' 38.84" N; 87° 34' 14.18" W	Bee Slough at Ohio River
East	008	Chestnut Street 37° 57' 58.58" N; 87° 34' 25.18" W	Ohio River
East	010	Dress Plaza 37° 58' 11.61" N; 87° 34' 36.23" W	Ohio River
East	011	Weimbach Lift Station (Oakhill Road) 37° 59' 42.38" N; 87° 31' 37.48" W	Pigeon Creek
East	038	Oak Street and Riverside 37° 57' 51.72" N; 87° 34' 25.55" W	Ohio River
West	006	Fulton Ave. Pumping Station 37° 58' 25.01" N; 87° 34' 54.66" W	Ohio River
West	009	7 <sup>th</sup> Avenue-West 37° 58' 31.13" N; 87° 35' 08.17" W	Ohio River
West	012	Maryland Street – West Bank 37° 59' 08.41" N; 87° 35' 27.45" W	Pigeon Creek
West	013	Delaware Street 37° 58' 58.57" N; 87° 35' 20.77" W	Pigeon Creek
West	014	Dresden Street 37° 59' 37.70" N; 87° 35' 20.77" W	Pigeon Creek
West	015	7 <sup>th</sup> Avenue-East 37° 58' 31.12" N; 87° 35'	Ohio River

		07.66" W	
West	016	Franklin Street 37° 58' 48.61" N; 87° 35' 15.16" W	Pigeon Creek
West	017	6 <sup>th</sup> Avenue 38° 00' 07.28" N; 87° 34' 57.78" W	Pigeon Creek
West	018	Oakley Street 37° 59' 43.31" N; 87° 34' 29.71" W	Pigeon Creek
West	020	9 <sup>th</sup> Avenue 37° 58' 33.29" N; 87° 35' 32.11" W	Ohio River
West	022	St. Joseph Avenue 37° 58' 23.19" N; 87° 36' 01.72" W	Ohio River
West	123	West WWTP CSO 37° 58' 01.49" N; 87° 36' 15.64" W	Ohio River
West	024	Baker Street 37° 59' 41.22" N; 87° 34' 04.10" W	Pigeon Creek
West	025	Diamond Avenue 37° 59' 56.85" N; 87° 33' 57.49" W	Pigeon Creek

## CONSENT DECREE APPENDIX B: Implementation Schedule

	<b>DELIVERABLE</b>	<b>DU<sup>E</sup> DATE</b>
1	Submit SSES Work Plan	November 30, 2010
2	Submit SORP 1.0	December 1, 2010
3	Submit Public and Regulatory Participation Plan.	December 31, 2010
4	Submit 7 <sup>th</sup> Ave Pump Station Wet Weather Operating Plan (Consent Decree paragraph 20.a)	January 31, 2011
5	Submit Capacity Assessment Work Plan including approach for determining Critical Storm Duration	April 30, 2011
6	Install baffles in the secondary treatment system clarifiers at the West WWTP (Consent Decree paragraph 20.b)	April 30, 2011
7	Submit CMOM 2.0	May 1, 2011
8	Submit SORP 2.0	May 1, 2011
9	Submit New CMMS	July 31, 2011
10	Complete Water Quality Data Review and submit SRCER Update, including the Water Quality Model of Pigeon Creek and the Ohio River.(GC)	August 31, 2011
11	Submit report on capacity of clarifiers	November 1, 2011
12	Submit report evaluating the effectiveness of step feed and/or contact stabilization in the secondary aeration basins to maximize wet weather flow through the secondary treatment at East WWTP and West WWTP.(Consent Decree paragraph 19.a and 20.c)	November 1, 2011
13	Submit stress test protocols that will identify the proposed revision to the Maximum Treatable Flow of the East WWTP and West WWTP. (Consent Decree paragraph 19.d and 20.d)	November 1, 2011
14	Complete Trunk Sewer Survey and Condition Assessment.	November 30, 2011

18	Submit Update to West CSS and East CSS characterization and hydraulic model including development of SSS Hydraulic model.	November 30, 2011
19	Submit Critical Storm Duration Analysis	December 31, 2011
20	Submit Revised Financial Analysis	January 31, 2012
21	Submit CSO Alternative Analysis Screening Report.	January 31, 2012
22	Install East WWTP Early Action Upgrades including a second bar screen and fourth influent pump. (Consent Decree paragraph 19.b and c)	March 1, 2012
23	Submit SSA Report including SSES Report, and Capacity Assessment	March 31, 2012
24	Conduct a stress test of East and West WWTP and identify revised Maximum Treatable Flow. (Consent Decree paragraph 19.d and 20.d)	July 31, 2012
25	Implement revised Maximum Treatable Flow operations at the East and West WWTP. (Consent Decree paragraph 19.e, 20.e)	July 31, 2012
26	Submit the Draft IOCP to Plaintiffs and to Public, including but not limited to CSO/SSS Capacity Alternatives Analysis; the Alternatives Analysis for the LTCP; the Alternatives Analysis for the SSRMP; the Facility Plans for Expansions of the East and West WWTPs; and proposed Implementation Schedules for the SSRMP, LTCP	July 31, 2012
27	Revise the West WWTP and the East WWTP Maximum Treatable Flow designations in CSOOP. (Consent Decree paragraph. 19.e and 20.e)	November 1, 2012
28	Submit CMOM 3.0	November 30, 2012

29	Submit Final IOCP, including Post-Construction Monitoring Plan	November 30, 2012
30	Complete Full Implementation of the IOCP*	May 31, 2032
31	Complete Post Construction Monitoring	May 31, 2033
32	Submit Post Construction Monitoring Report	May 31, 2034

\*Subject to extension approved by Plaintiffs pursuant to Section VII.E of this Consent Decree (IOCP Schedule Reconsideration Based on Financial Circumstances) and Section XV of this Consent Decree (Review and Approval Procedures).

## **CONSENT DECREE APPENDIX C: IOCP Requirements**

Defendants will develop its Integrated Overflow Control Plan (IOCP), which will be an overall capital improvements plan (CIP) that integrates the Utility's combined sewer overflow (CSO) long-term control plan (LTCP) with a prioritized set of projects focused on identifying and addressing any capacity-related sanitary sewer overflows (SSOs) found within the separate sanitary sewer (SSS) collection system during system evaluation. The LTCP portion of the IOCP shall be developed and implemented in accordance with the federal Combined Sewer Overflow Control Policy, 59 Fed. Reg. 18688 (April 19, 1994), (CSO Policy) and other relevant guidance as stated below.

### **A. Public and Regulatory Agency Participation.**

Defendants shall update their Public and Regulatory Agency Participation Program ("Participation Program") to ensure that there is ample public participation throughout the stages of the development of Defendants' IOCP. The Participation Program shall include, at a minimum, the following:

1. The means by which Defendants shall make information pertaining to the completion of the development of the IOCP available to the public for review.
2. The means by which Defendants shall solicit comments from the public on the completion of the development of the IOCP.
3. Summaries of public meetings at meaningful times during the process of completing the development of the IOCP to provide information to and solicit comments from the public regarding the components of the IOCP.
4. Consideration of comments provided by the public as Defendants complete the development of the IOCP.
5. Measures to ensure that U.S. EPA and IDEM are kept informed of Defendants' progress in completing the development of its IOCP, including scheduling periodic meetings with U.S. EPA and IDEM at meaningful times, including but not limited to before major milestones in the IOCP development process and submitting reports to Plaintiffs summarizing the public comments received during implementation of the Participation Program.

### **B. Stream Reach Characterization and Evaluation Report ("SRCER") Update.**

1. Defendants shall prepare and submit to U.S. EPA and IDEM an update of the past SRCER submittals (referred to herein as the 2011 SRCER Update). The 2011 SRCER Update will utilize the 2008 Ohio River SRCER, 2001 Pigeon Creek Watershed Diagnostic Study, and related ORSANCO data and/or studies to produce the single 2011 SRCER Update document. The 2011 SRCER Update will update the characterization of water quality in the Ohio River and Pigeon Creek, and will evaluate the impacts of CSO Discharges, other point sources, and non-point sources upon the Ohio River and Pigeon Creek. The 2011 SRCER Update will identify the

reaches of the Ohio River which Defendants previously identified as "sensitive areas" as described in the CSO Policy. Defendants may identify additional sensitive areas consistent with the CSO Policy. The 2011 SRCER Update will update the identification of the pollutant parameters of concern previously identified in the past characterization reports listed above. The 2011 SRCER Update will include the features described in Paragraphs B.2 through B.5 below.

2. Defendants shall compile and evaluate the past data on Pigeon Creek and the Ohio River to support the development of a Water Quality Model, establish the requirements for the 2010 Pigeon Creek water quality sampling effort, and to direct preparation of the 2011 SRCER Update. The data evaluated shall include information derived from the existing East and West CSS Hydraulic Models, existing precipitation data, CSO Discharge data, other available point source Discharge volume and quality data, existing hydrologic and water quality monitoring data, other existing stream condition assessments, and past modeling efforts. The data will be sourced from the reports noted above and from ORSANCO.

3. Defendants shall conduct water quality sampling in Pigeon Creek and for selected CSOs. The purpose of the additional water quality sampling will be to verify the past efforts to characterize CSO impacts on Pigeon Creek, and to support the development of a basic Water Quality Model of the Ohio River and Pigeon Creek. If a sufficient number of rain events do not occur prior to June 15, 2011, Defendants shall use literature data and other sources to complete the Pigeon creek Water Quality Model. Defendants have determined that the ORSANCO data that exists for the Ohio River is sufficient and adequate for these purposes so no additional water quality sampling shall be conducted on the Ohio River to support the development of a LTCP. Defendants shall prepare a Water Quality Sampling Work Plan and quality assurance program plan (QAPP) to direct sampling and analysis activities for Pigeon Creek consistent with Appendix C.

4. Defendants shall develop a suitable Water Quality Model of Pigeon Creek and the Ohio River that will be used to support the 2011 SRCER Update, to identify the in-stream water quality benefits of CSO controls implementation, and to support the Use Attainability Analysis (UAA) process should one be necessary.

5. Defendants shall prepare the 2011 SRCER Update, which will update and augment the information and data presented in the past SRCER documents and in the Pigeon Creek Watershed Diagnostic Study. The 2011 SRCER Update will also describe the results of the tasks listed in Paragraphs B.2 through B.4 and how those results relate to and enhance the past characterization results.

### **C. System Characterization.**

1. Defendants shall update the System Characterization Program (the "Characterization Program") to augment and support development of the IOCP and to document its understanding of the current conditions of the Sewer Systems and receiving waters. The Characterization Program shall:

- a. establish the baseline physical and operational attributes of its existing

Sewer Systems and WWTPs;

- b. monitor Sewer Systems flows and CSO Discharges;
- c. collect any additional data needed to facilitate the development, calibration, and validation of the modeling required pursuant to Section E of this Appendix C below; and
- d. conduct sewer system evaluation studies (SSES) on selected portions of the separate sanitary sewer system.

2. The Characterization Program shall assess the characteristics and physical attributes of the existing Sewer Systems and two WWTPs and the existing precipitation data and river stage impacts. These assessments shall be based on a variety of techniques, including physical inspections (by closed-circuit television or other means), construction record drawings, analysis of flow monitoring data, work order history, and engineering judgment, and shall include the following:

- a. physical characteristics and attributes of Defendants' Sewer Systems, including system configuration; pipe composition, diameter, shape, length, slope, elevation, age, and interior surface condition (i.e., representative friction coefficients for pipeline segments included in the Hydraulic Models); regulator, manhole and other appurtenances, shapes, sizes, elevations and interior condition; and Pump Station capacities and characteristics;
- b. all CSO Discharge flow and quality data;
- c. WWTPs' flows and flows within Defendants' Sewer Systems;
- d. stream flow, level, and water quality monitoring data, as needed to supplement the data included in the 2011 SRCER Update;
- e. an estimation of the infiltration and inflow (I/I) to the Separate Sanitary Sewer Systems in the areas and portions of the Sewer Systems covered by the System Evaluation;
- f. river and creek water surface elevation data;
- g. precipitation monitoring data for locations throughout the areas served by Defendants' Sewer Systems and at the Facilities; and
- h. data acquisition needed to adequately support the development of the Hydraulic Models and the IOCP.

3. The data collected as part of the SRCER required by Section B of this Appendix

C, and the Characterization Program under this Section C, are intended to be complementary, and not duplicative. The data used in the development of the Model and the LTCP portion of the IOCP shall be consistent with good engineering practice and the U.S. EPA's "Combined Sewer Overflows: Guidance for Monitoring and Modeling" (1999), U.S. EPA's "Combined Sewer Overflows: Guidance for Long Term Control Plan" (1995), 40 C.F.R. Part 136.

4. The Characterization Program shall include:

- a. digitized maps which illustrate the configuration and location of all sewer pipes 8 inches and larger (identifying Force Mains, Gravity Sewer Segments, and, to the extent practicable, including the size of the sewers so mapped), WWTPs, interceptors, Pump Stations, siphons, wastewater storage and sewer vaults, manhole locations, and flow control valves, and the known location of SSOs and CSS Releases for the five years preceding October 1, 2010;
- b. identification of the Sewersheds that contribute flow to the East and West SSSs and CSSs;
- c. identification, if known, of any cause or condition that contributed to each SSO and CSS Release;
- d. digitized maps which also indicate the locations of prior and proposed monitoring included in the 2011 SRCER Update;
- e. schematic(s) which illustrate the relationship between all of the major components of the Sewer Systems mentioned above;
- f. in-stream water quality and CSO sampling conducted as a part of the 2011 SRCER Update;
- g. activation data on all of Defendants' CSO Discharge Outfalls;
- h. an analysis of activation data on Defendants' CSO Discharge Outfalls from 2006 through 2009 to determine the length of time CSOs discharge after a precipitation event and the conditions under which these Discharges may have occurred.

5. The Characterization Program shall use sufficient numbers of appropriately located recording rain gauges to allow accurate characterization of rainfall amounts in areas served by Defendants' Sewer Systems;

6. The Characterization Program shall use appropriate data management systems to organize, analyze and report the data collected as part of the monitoring required under this Appendix C to ensure that the data shall support the development of the Models and the LTCP.

7. The Characterization Program shall use appropriate quality assurance and quality control programs in the approved SSES workplan.

**D. Separate Sanitary Sewer System Evaluation and Work Plan.**

1. Defendants shall conduct an evaluation of sewers in selected Sewersheds within the East and West separate sanitary sewer (SSS) systems to: (i) identify Sewersheds with excessive infiltration and inflow (I/I) rates which are causing and/or contributing to any persistent sanitary sewer overflows (SSOs) that have occurred more than once in the last five-years; (ii) identify and quantify sources of I/I within these Sewersheds; (iii) identify cross connections and unauthorized connections between storm sewers and sanitary sewers; and (iv) identify substantial physical defects of the Sewer Systems that cause or contribute to SSOs.

2. In July 2010, Defendants submitted to the Plaintiffs a Draft SSES Work Plan. In accordance with the schedule in Appendix B, Defendants shall submit to Plaintiffs pursuant to Section XIV (Notices and Submissions), a revised SSES Work Plan that addresses the following:

- a. In prioritizing subbasins for analysis, Defendants shall consider locations with multiple backups, overflows, or service requests, in addition to the factors described in the Draft SSES Work Plan.
- b. In the Draft SSES Work Plan, Defendants used a cutoff of 1.0 SSOs and backup reports per mile per year. Defendants shall clarify why it selected this cut-off, and how this compares to national averages. As a result of using this cutoff, Defendants prioritized approximately 20% of the SSS for evaluation through the SSES program. Defendants shall explain why it believes this 20% is adequate for the initial SSES activity.
- c. Defendants shall provide its quality assurance/quality control procedures for flow monitoring, including a discussion of manual depth and velocity profiles discussed in the Draft SSES Work Plan.
- d. For the subbasins evaluated in the SSES activities, Defendants shall specify the percent for which the following activities will occur:
  - i. Manhole inspections
  - ii. Smoke testing
  - iii. Inspection using QuickView inspection
  - iv. Inspection using CCTV.

If Defendants do not plan to perform one of these activities on a specified percentage of the system, Defendants shall explain how it will determine when it will perform that activity.

3. The SSES Work Plan shall include a detailed schedule for the condition assessment and SSES activities, ensuring that all activities will be completed and incorporated

into the final IOCP submitted in January 2013.

4. Upon Plaintiffs' approval of the SSES Work Plan pursuant to Section XV of this Consent Decree (Review and Approval Procedures), Defendants shall implement the approved plan in accordance with the Appendix B schedule and all schedules set forth in the approved SSES Work Plan.

**E. Update to Modeling Program:**

1. Defendants shall update its models for the East Sewer System and West Sewer System, including development of SSS Hydraulic Models and a Water Quality Model, and update of the CSS Hydraulic Models, to aid in the identification of a range of potential water pollution treatment/control alternatives and to evaluate the impacts of such alternatives on the water quality of the receiving streams and the operation of the Sewer Systems. The Update shall represent modeling for both the East Sewer System and the West Sewer System, including their corresponding Combined Sewer Systems, and shall include, at a minimum, the features described in Paragraphs E.2 through E.8 below.

2. Defendants shall develop hydraulic models of selected Sewersheds in the SSS (the SSS Hydraulic Models). The Sewersheds will be selected based on the results of the evaluations conducted in Paragraphs D.1 through D.4 above. Sewersheds will be selected that are found through these evaluations to have excessive I/I rates, recurring wet-weather SSOs, and/or significant capacity restrictions. The models will include only 12 inch or larger diameter Gravity Sewer Segments and Pump Stations and Force Mains that are directly connected to the modeled sewers, and Gravity Sewer Segments smaller than 12 inches in diameter in areas that are identified to have mainline capacity-related overflows or areas of widespread capacity-related basement backups.

3. As part of the Update to the Modeling Program, Defendants shall prepare and submit to U.S. EPA and IDEM a work plan for modeling wet weather flows from separate sanitary sewer service areas by developing the SSS Hydraulic Models (the SSS Hydraulic Modeling Work Plan), which will describe the approach used to select and prioritize Sewersheds for modeling, identify the specific Sewersheds targeted for modeling, identify the pipeline segments to be modeled within the selected Sewersheds, identify the lift stations that will be included in the models, and describe the activities that will be conducted to complete the development, calibration, and validation of the SSS Hydraulic Models. The SSS Hydraulic Modeling Work Plan shall include:

- a. a description of the SSS Hydraulic Models;
- b. specific attributes, characteristics, and limitations of the SSS Hydraulic Models;
- c. identification of input data, parameters, constants, assumed values, and expected outputs;

- d. digitized map(s) and schematic(s) that identify and characterize the portions of the SSS that shall be included in the SSS Hydraulic Models;
- e. configuration of the SSS Hydraulic Models;
- f. procedures and protocols for performance of sensitivity analyses (i.e., how the SSS Hydraulic Models respond to changes in input parameters and variables) and identification of the ranges within which calibration parameters shall be maintained;
- g. procedures for calibrating the SSS Hydraulic Models to account for values representative of the SSS and interaction with the CSS using actual data from the SSS and WWTP CSS (e.g., flow data and hydraulic grade line data);
- h. procedures to verify the SSS Hydraulic Models using actual data from the SSS, CSS and WWTPs (e.g., flow data and hydraulic grade line data);
- i. development of hydraulic and hydrologic parameters (base SSS flow, permanent groundwater infiltration, and I/I response); and
- j. the SSS Hydraulic Model development schedule.

4. The SSS Hydraulic Models shall be capable of:

- a. calculating base flows and wet weather flows generated by various wet-weather events to the CSS and the WWTPs;
- b. calculating the hydraulic grade lines, volume and flow rates of wastewater in Force Mains and Gravity Sewer Segments included in the SSS Hydraulic Models
- c. calculating the flow capacities of the Gravity Sewer Segments and the flow capacities and corresponding hydraulic pressures in the Force Mains included in the SSS Hydraulic Models;
- d. calculating the peak flows during wet weather and dry weather conditions for the modeled Pump Stations and Gravity Sewer Segments;
- e. calculating the likelihood and location of SSOs for a range of precipitation events (of varying durations and return frequencies) consistent with F(1), below;
- f. calculating the peak instantaneous and sustained flows into the CSS for a variety of storm events (of varying durations and return frequencies) consistent with F(1), below ;

- g. estimating wastewater flow, groundwater infiltration, inflow, and precipitation-induced I/I; and
- h. providing the output data necessary to complete development of the IOCP.

5. Defendants shall update and verify calibration of the CSS Hydraulic Models based on the development and calibration of the SSS Hydraulic Models and the collection of in-system flow data. After update and calibration, Defendants shall integrate the results and outputs of the SSS Hydraulic Models described above with the CSS Hydraulic Models in order to correlate and verify the Hydraulic Models' results and to match the conditions at the CSS/SSS interface.

Upon integration, calibration, and verification, these models will collectively be referred to as the Integrated Hydraulic Models and Defendants shall use the Integrated Hydraulic Models to identify capacity limitations in the WWTPs East CSS and East SSS, and the West CSS and West SSS, to assess the interaction between the various systems, and to further evaluate the impact that remedial measures in the East SSS and West SSS may have on the LTCP portion of the IOCP.

6. The Update to the Modeling Program shall include the development and utilization of a Water Quality Model to be used in conjunction with the Integrated Hydraulic Models in the completion of the development of the IOCP, and in support of a UAA should one be determined to be necessary. The Defendants will develop and calibrate the Water Quality Model of the Ohio River and Lower Pigeon Creek (the portion of Pigeon Creek within the City's service area and MS4 area). The Model shall be capable of:

- a. Accurately modeling pollutants of concern in the receiving waters, under existing and future conditions, during an appropriate range of both dry- and wet-weather conditions, and across an appropriate range of river and creek flows;
- b. Assessing the impacts on water quality (both individually and relative to other sources) from Discharges from the outfalls that discharge from both the East and West WWTPs, CSSs and bypass discharges under those ranges of wet weather conditions; and
- c. Assessing relative changes in water quality from CSO Discharges, bypass discharges and discharges from the WWTPs expected to occur in the Typical Year expected to occur following implementation of the various control measures that Defendants shall evaluate in completing the development of the LTCP portion of the IOCP.

7. As part of the Update to the Modeling Program, Defendants shall prepare and submit to U.S. EPA and IDEM a work plan for developing the Water Quality Model (the Water Quality Model Development Work Plan). The work plan shall include:

- a. A description of the Water Quality Model;
- b. Specific attributes, characteristics, and limitations of the Water Quality Model;
- c. Identification of input parameters, constants, assumed values, and expected outputs;
- d. Identification of input data to be used and the development of data- and spreadsheet-based tools to specify inputs needed for the Water Quality Model;
- e. Configuration of the Water Quality Model;
- f. Procedures and protocols for performance of sensitivity analyses (i.e., how the Water Quality Model responds to changes in input parameters and variables);
- g. Procedures for calibrating the Water Quality Model using actual water quality monitoring and river flow data;
- h. Procedures to verify the Water Quality Model's calibration using available water quality monitoring and river flow data; and
- i. The Water Quality Model development schedule.

8. The Integrated Hydraulic Models and Water Quality Model shall be used for the development of the IOCP. In addition, the Integrated Hydraulic Models shall also be used in the development and implementation of operation and maintenance procedures and to establish priorities for, and evaluate the impacts of, proposed system modifications and upgrades. Defendants shall also use the Integrated Hydraulic Models, or other appropriate engineering analyses, to assess the hydraulic capacities of Pump Stations in the modeled area serving the East and West Sanitary Sewer Systems, and major sewers within the Sanitary Sewer Systems (as specified by Defendants in its SSS Hydraulic Models Work Plan), and to identify whether those identified capacities are currently insufficient, or are expected to become insufficient, under future conditions (which shall include system modifications proposed by the IOCP). The evaluation of the Sanitary Sewer Systems' capacities is to assure that future Sanitary Sewer Systems characteristics shall be consistent with the CSO Discharge control measures that Defendants shall propose in the LTCP portion of the IOCP.

#### **F. Capacity Assessment**

1. Defendants shall perform a Capacity Assessment of all Pump Stations, Gravity Lines, Force Mains and siphons. The Capacity Assessment shall specifically identify, at a minimum, the hydraulic capacities of Gravity Sewer Segments, all Pump Stations, and all Force Mains and shall compare those capacities to existing and future projected growth (through the

current year plus twenty (20) years), average and peak, dry and wet weather flows. The assessment will shall include 12 inch or larger diameter Gravity Sewer Segments and Pump Stations and Force Mains that are directly connected to the modeled sewers, and Gravity Sewer Segments smaller than 12 inches in diameter in areas that are identified to have mainline capacity-related overflows or areas of widespread capacity-related basement backups. The Capacity Assessment shall identify, within the aforementioned portions of Defendants' Sewer Systems, those portions of the Sewer Systems that are expected to cause or contribute to SSOs, CSS Releases, Bypasses and/or overloading at the WWTPs under existing and future projected, average and peak, dry and wet weather flows, and the degree to which those portions experience or cause, under current or projected future conditions, SSOs, CSS Releases, Bypasses and/or overloading at the WWTPs. The Capacity Assessment shall consider local rainfall data and the impact of an appropriate range of rainfall events, based on return frequency and duration, on peak wet weather flows within those portions of Defendants' Sewer Systems identified in the Capacity Assessment. At a minimum, the Capacity Assessment shall consider Sewer System performance under the following conditions:

- a. Average dry weather and peak dry weather; and
- b. Specified storm events, to include at a minimum, the following:
  - (i) 2 year/ "critical storm duration";
  - (ii) 5 year/ "critical storm duration";
  - (iii) 10 year/24 hour; and
  - (iv) 10 year/ "critical storm duration."

The "Critical Storm Duration" means the duration of a specific return frequency storm event (e.g., 2-year, 5-year, 10-year) which creates the greatest stress on the sewer system, including the maximum surcharge and system outflow. The critical duration can be determined using flow monitoring and/or modeling data. The critical duration is determined by comparing various durations of the specified storm and calculating the peak wet weather flow rate and volume of runoff for each. The duration resulting in the highest peak wet weather flow rate or largest total volume is the "critical duration" storm.

2. The storms designated above shall be based upon the most current National Oceanic and Atmospheric Administration storm return frequency information for Defendants' geographic region, and all analyses of such storms shall use a temporal rainfall distribution pattern recognized in the technical literature as appropriate for Defendants' geographic region.

3. The Capacity Assessment shall employ a properly calibrated Hydraulic Model (or Models) to assess the hydraulic capacity of the Sewer Systems and to identify appropriate remedial measures to address all capacity limitations in the Sewer Systems. The Hydraulic Model shall include all Gravity Sewer Segments, all Pump Stations, and all Force Mains, and shall be accompanied with a written description of the model configuration and calibration and verification activities.

4. The Capacity Assessment shall, at a minimum, characterize Sewer System performance by identifying, for each condition considered, each pipe segment operating

surcharged condition, each manhole or structure at which an SSO or a CSS Release might be expected to occur, and whether the available capacity at the WWTPs is exceeded.

**G. Sewer Systems Assessment Report (“SSA Report”)**

1. Defendants shall prepare and submit to U.S. EPA and IDEM the SSA Report, which will compile and correlate the results of the Sewer System Characterization in Section C of this Appendix C, the SSES in Section D of this Appendix C, and the Capacity Assessment in Section F of this Appendix C. The SSA Report shall include the following additional information for the Sewersheds areas and Sewer Segments included in the SSES and SSS Hydraulic Models:

- a. Quantification of existing flows for the CSS and sewersheds undergoing additional monitoring under this Appendix C;
- b. Average and peak daily Dry Weather Flow for each Sewer System;
- c. Average dry weather Infiltration rates (in gallons per day/in diameter mile);
- d. Peak wet weather flows and peaking factors (the ratio of peak flow to average dry weather flow for each Sewer System);
- e. Identification of portions of each SSS experiencing levels of I/I that cause or contribute to SSOs and CSS releases;
- f. Identification of specific sources of I/I to the Sanitary Sewer Systems by manhole/Sewer Segment, street address, type (Infiltration or Inflow), source, and estimated flow from the source;
- g. A summary of flow monitoring activities, to include, at a minimum, a map showing the delineation of the Sewersheds, the location and type of each flow meter, problems encountered and deviations from the Separate Sanitary Sewer System Evaluation and Work Plan required under Section D of this Appendix C and a description of calibration and verification activities for each flow meter, including scatter graphs and calibration and verification graphs;
- h. A summary of the major structural defects identified to include, at a minimum, number of each type of defect by Sewer Segment, manhole number or street address, and estimates of peak flow or impact on sewer capacity (as appropriate) from all defects in each Sewer Segment, based on a consistently applied set of stated criteria;
- i. An assessment of the impacts of surface flooding on the SSS and identification of conditions that can affect the normal function of the SSS.

- j. Identification of all portions of the Sanitary Sewer Systems with insufficient capacity to convey peak wet weather flows;
- k. Identification of the inability to provide full treatment, other than approved CSO-related Bypass, to all flow reaching each WWTP and to discharge those flows in full compliance with the NPDES Permits;
- l. A projection of sewer service area growth to 2032 for each Sewer System and each WWTP;
- m. Information on the nominal and actual peak flow capacity of all Sewer Segments, all Force Mains and siphons, and all Pump Stations included in the SSS Hydraulic Models and WWTPs;
- n. Summaries, by Sewershed, of the number and footage of Sewer Segments surcharged, and the number of structures at overflow, under each condition investigated in the Capacity Assessment; and
- o. Mapping of each Sewershed for each condition investigated in the Capacity Assessment, illustrating each Sewer Segment operating in surcharge, and each manhole or structure at which an SSO or CSO Release might be expected to occur.

#### **H. Sanitary Sewers Remedial Measures Plan (“SSRM Plan”)**

- 1. Defendants shall prepare and submit to U.S. EPA and IDEM a SSRM Plan that shall establish a plan and schedule for implementing remedial measures designed to prevent and eliminate SSOs to the selected site-specific or system-wide design storm, under current and future projected flow conditions. The proposed SSRM Plan shall:
  - a. Identify the measures necessary to achieve adequate capacity in the Sanitary Sewer Systems, and specify a plan for implementing such measures. Adequate capacity is that capacity needed to store, collect and convey the selected design storm and anticipated peak wet weather flows to the CSS trunk sewers or WWTPs without SSOs, CSS Releases, Bypasses or overloading at the WWTPs;
  - b. Estimate the degree to which I/I shall be cost-effectively removed, and the degree to which I/I removal is projected to alleviate capacity constraints, and propose specific remedial measures that shall address those capacity limitations not expected to be addressed by I/I removal;
  - c. Identify the SSS remedial measures designed to rehabilitate degradation of pipes, correct misalignment of pipes, increase inadequate Pump Station capacities, or improve Pump Station operation and maintenance processes

that are identified during the SSES activities to be potentially causing or contributing to SSOs or CSS Releases;

- d. Prioritize Sewer System remedial measures based on factors such as:
  - human health and environmental impact risks;
  - frequencies of SSOs and CSS Releases
  - total annual SSO volumes;
  - integration with the LTCP projects; and
  - effects of additional SSS flows to the CSS and WWTPs;
  - impact on environmental justice populations, including the schedule for implementation, in accordance with EPA's Environmental Justice Strategy (April 1995), and Presidential Executive Order 12898.
- e. Provide estimated capital, operation and maintenance and present value costs for each identified remedial measure in consistent, year-specific dollars; and
- f. Provide a schedule as expeditious as possible that integrates the remedial measures with the implementation schedule described in Paragraph I.9, below.

#### **I. Update of LTCP Portion of IOCP.**

1. Defendants shall complete the update of and shall implement the LTCP which shall provide for the construction and implementation of WWTP and Sewer Systems improvements and other measures necessary to: (a) ensure that CSO Discharges to the Ohio River, Pigeon Creek, Bee Slough (and any other water receiving Defendants' CSO Discharges) comply with the technology based and water quality based requirements of the CWA, state law and regulation, and Defendants' NPDES Permits; and (b) address Discharges of CSO-related bypasses from the WWTPs in conformance with the requirements of the CSO Policy. In addition, the LTCP shall propose specific wastewater-related remedial measures for Bee Slough. The LTCP shall build upon, and integrate the results of the SRCER, the Characterization Program, and the Modeling Programs for the East and West WWTPs and Sewer Systems. The LTCP shall include, at a minimum, the features described in Paragraphs I.2 through I.10, below.

2. The LTCP shall include an evaluation and screening of a range of alternatives for eliminating, reducing, or treating CSO Discharges from both the East and the West CSSs, and for eliminating Bypass Discharges (except as permitted by the Bypass conditions in 40 C.F.R. § 122.41(m) and 327 IAC 5-2-8(11)). In identifying assessing and selecting alternatives for the LTCP, Defendants shall give the highest priority to controlling overflows to sensitive areas (as defined in B.4 of this Appendix C). Defendants' LTCP shall not include new or increased overflows to sensitive areas. The LTCP shall eliminate or relocate overflows that discharge to sensitive areas wherever physically possible and economically achievable, except where elimination or relocation would provide less environmental protection than additional treatment. Where elimination or relocation is not physically possible and economically achievable, or would provide less environmental protection than additional treatment, the LTCP shall provide

the level of treatment for remaining overflows deemed necessary to meet WQS for full protection of existing and designated uses.

Alternatives considered during this screening evaluation shall include the following, as appropriate for the range of CSO Discharge conditions experienced in the Defendant's combined sewer system:

- a. taking no-action;
- b. complete sewer separation;
- c. partial separation of various portions of the combined Sewer Systems;
- d. installation of various sizes of storage or equalization basins at Defendants' WWTPs and/or in the Sewer Systems;
- e. construction of new secondary or advanced wastewater treatment plants
- f. construction of increased treatment capacities of existing Facilities;
- g. construction of additional facilities (such as high rate treatment or ballasted flocculation facilities) for providing primary treatment or better than primary treatment of Discharges from CSO Outfalls and/or construction of facilities for providing disinfection (and dechlorination, if necessary) of CSO Discharges;
- h. construction of relief sewers; and/or new intercepting sewers from the Sewer Systems to the Facilities;
- i. construction of facilities for removing floatables from CSO Discharges;
- j. relocation of CSO Outfalls;
- k. implementation of pretreatment measures to reduce flows and/or pollutants discharged into the Sewer Systems from Industrial Users; and
- l. construction and/or implementation of combinations of these alternatives, using the alternatives analyses portion of U.S. EPA's "Combined Sewer Overflows Guidance for Long-Term Control Plan."

This screening shall result in the identification of an appropriate list of alternatives for further evaluation. This further evaluation shall consider the costs, effectiveness (in terms of reduction of overflows, pollutant loading reductions, etc.) and the water quality improvements of the appropriate list of alternatives. In performing the evaluation, Defendants shall use the results of the SRCER, the Characterization Program, and the Hydraulic Models and Water Quality Models developed under the Modeling Program. Defendants shall prepare a report showing the results of

the screening analysis in accordance with the schedule in Appendix B and submitted to EPA/IDEM under Section XIV of the Consent Decree (Notices and Submissions).

3. For each alternative or combination of alternatives identified for further evaluation under Paragraph I.2 above, Defendants shall evaluate, at a minimum, (a) a range of sizes of each alternative or combination of alternatives, that shall in a Typical Year provide capture and/or treatment, on an annual basis, of a range of CSS flows during precipitation events on a system-wide basis, to achieve 100%, 90%, 85%, 80%, and 75% capture for treatment; and (b) a range of sizes of each alternative or combination of alternatives that shall reduce the number of untreated CSO Discharges in a Typical Year on an annual basis to the following frequencies: 0, 1, 3, 4, 7, 8 and 12 Discharges. For each alternative or combination of alternative as part of the LTCP, Defendants' assessment shall include, at a minimum, an evaluation of the technical feasibility and applicability of each alternative or combinations of alternatives at each CSO Outfall or grouping of CSO Outfalls.

4. For each alternative or combination of alternatives evaluated as part of the LTCP, Defendants' assessment shall include a determination of the estimated project costs, as that term is described on pages 3-49 through 3-51 of the U.S. EPA's "Combined Sewer Overflows Guidance for Long-Term Control Plan." The determination of the estimated project costs shall include:

- a. capital costs, annual operation and maintenance costs, and life cycle costs, as those terms are described on pages 3-49 through 3-51 of U.S. EPA's "Combined Sewer Overflows Guidance for Long-Term Control Plan;" and
- b. an itemization of the capital costs and annual operation and maintenance costs used to determine the total project costs for each separate component of each alternative or combination of alternatives.

5. For each alternative or combination of alternatives evaluated as part of the LTCP, Defendants' assessment shall include an evaluation, using the results of the SRCER and the Water Quality Model, of the expected water quality improvements in the receiving waters that would result from implementation of each alternative or combination of alternatives. The evaluation shall include, at a minimum, an analysis of the improvement in each pollutant of concern in that receiving water; the change to the number of CSO Discharges and reductions in the number of gallons of untreated Discharges controlled by the alternative(s).

6. For each alternative or combination of alternatives evaluated as part of the LTCP, Defendants' assessment shall include a cost-performance analysis, such as a "knee of the curve" analysis, that shall allow for the comparison of the alternatives' costs to:

- a. the associated expected water quality improvements;
- b. the reduction of CSO Discharge and Bypass Discharge volume;
- c. the reduction in CSO Discharges and Bypass Discharges; and/or

- d. the reduction in pollutant loading from CSO Discharges and Bypass Discharges,

7. The LTCP shall include the selection of CSO Discharge control measures, including the construction of Sewer System and Facility Improvements consistent with the CSO Policy, necessary to ensure compliance with the technology-based and water quality based requirements of the CWA, state law and regulation and Defendants' NPDES Permits. The LTCP shall include the selection of bypass discharge control measures, including the construction of Sewer System and Facility improvements necessary to show Discharges from bypass outfalls, comply with the conditions in 40 C.F.R. § 122.41(m) and 327 IAC 5-2-8(11). In analyzing the selection of CSO Discharge control measures, the LTCP shall include an analysis of the LTCP's impact on environmental justice populations, including the schedule for implementation, in accordance with EPA's Environmental Justice Strategy (April 1995), and Presidential Executive Order 12898.

8. Financial Capability Assessment: The LTCP shall include an evaluation of Defendants' financial capability to fund the selected alternative or combination of alternatives, including, at a minimum, an analysis of:

- a. median household income/total project cost per household;
- b. per capita debt as a percent of full market property value;
- c. property tax revenues as a percent of full market property value;
- d. property tax collection rate;
- e. economic conditions and unemployment rate;
- f. current and projected residential, commercial and industrial user fees;
- g. bond rating and other financial obligations of the city;
- h. bond capacity for the period specified in the IOCP for implementation of control measures;
- i. grant and/or loan eligibility and availability;
- j. other viable funding mechanisms and sources of financing;
- k. cash flow capacity for the period specified in the IOCP; and
- l. other factors which may be applicable to the financial evaluation.

The financial capability assessment shall (1) be consistent with and (2) include but not necessarily be limited to the information outlined in the "Combined Sewer Overflows Guidance

for Financial Capability Assessment and Schedule Development," EPA 832-B-97-004, published February 1997.

9. Implementation Schedule: The IOCP shall include a schedule as expeditious as possible, for the design, construction, and implementation of the control measures selected to eliminate SSOs and control CSOs consistent with the CSO Policy and the Defendant's NPDES permit. If it is not possible for Defendants to design and construct all measures simultaneously, the IOCP shall include a phased schedule based on the relative importance of each measure, with highest priority being given to eliminating SSO and CSS Releases, Discharges to sensitive areas and to reducing those CSOs with the greatest discharge of pollutants. The schedule shall specify critical construction milestones for each specific Control Measure, including dates for:

- a. Bid Date;
- b. Commencement of Construction; and
- c. Achievement of Full Operation.

10. Post Construction Monitoring: The IOCP shall include a post-construction monitoring program which shall be used to assess the effectiveness of the selected and completed SSO, CSO and Bypass Discharge Control Measures. The post-construction monitoring program must be adequate to: (1) measure compliance with water quality standards and protection of designated uses; (2) ascertain whether the projects are meeting the Performance Criteria established in the approved IOCP, and (3) to evaluate the impacts of any residual Discharges on water quality in the receiving streams. This post-construction monitoring program shall be consistent with the CSO Policy.

## **CONSENT DECREE APPENDIX D: Semi-Annual Report Format**

### **Semi-Annual Report for \_\_\_\_\_, 20\_\_\_\_\_ And Semi-Annual Statement or Certification Regarding Compliance with Certain Consent Decree Provisions**

#### **Consent Decree Section VI.A. Dry Weather Overflows.**

Prepare a table summarizing the date, duration, volume, and beginning time and ending time of all Discharges from the CSS occurring more than 24 hours after a precipitation event, the cause(s) of the Discharge, and all remedial actions undertaken to prevent its recurrence.

#### **Consent Decree Sections VI.A. and B. SSO and CSS Release Documentation and Reporting**

For all SSOs or CSS Releases during the six (6) month reporting period:

- Submittal of a map of the Sewer Systems that identifies Sewer Segments 8-inches and larger, WWTPs, Pump Stations, and the known location of all SSOs or CSS Releases that occurred during the six months for which the report is being submitted as identified on a GIS map (shapefile or similar electronic format). Submittals during the first year shall also include historical data on SSO and CSS Releases that have occurred in the previous three years. Submittals during the second year shall include such historical data from the previous four years. Thereafter, subsequent submittals shall include such historical data from the previous five years. A coding system shall identify the cause(s), if known (such as grease, roots, broken pipes, etc.) of the SSOs or CSS Releases;
- A report, in electronic, searchable format (e.g. spreadsheet) that lists all SSOs and CSS Releases that occurred during the preceding six months, identifying the date, location (include, if applicable, the manhole number, street address and/or facility ID/name), sewershed, Sewer Segment, duration, estimated volume, and cause(s), if known, of each SSO or CSS Release. This report shall also maintain historical information on all releases that have occurred in the previous five years;
- An indication of whether a SSO or CSS Release has previously occurred at the same Sewer Segment (or location), the same manhole, or the same Pump Station within five years of the date of the SSO or CSS Release and, if so, a list of the earlier date(s) on which a SSO or CSS Release occurred;
- A list of those SSOs or CSS Releases that have resulted in a Discharge, if known, and the name of the receiving waterbody and the location of the Discharge on that receiving waterbody; and
- All remedial actions undertaken or to be undertaken to mitigate the effects of the SSO

or CSS Release and to prevent its recurrence.

**Consent Decree Section VI.C.      Installation of Overflow Alarms at Pump Stations**

State the status of installation of overflow alarms on each pump station.

**Consent Decree Section VI.D.      Revisions to CSO Operational Plan**

State the status of revisions to and submittal of the Annual CSO Operational Plan update.

**Consent Decree Section VI.E.      Maximizing Existing Flow and Storage Capacity of the Sewer Systems**

Prepare a table summarizing the date, duration, volume, and beginning time and ending time of all discharges from CSO Outfall 123 and 009 that occurred during the period covered by the Semi-Annual Report on days when the West WWTP treated flows less than the Maximum Treatable Flow. The table must include the cause(s) of the Discharges all remedial actions undertaken to operate the West WWTP at the Maximum Treatable Flow during any discharges from CSO 123 and 009, and actions taken to prevent the recurrence of the Discharges. The table must also present sufficient information to determine if, during discharges from CSO 009, Defendants were operating the 7<sup>th</sup> Avenue Pump Station in accordance with the 7<sup>th</sup> Avenue Pump Station Wet Weather Operating Plan.

Prepare a table summarizing the date, duration, volume, and beginning time and ending time of all discharges from CSO Outfalls 103 that occurred during the period covered by the Semi-Annual Report on days when the East WWTP treated flows less than the Maximum Treatable Flow. The table must include the cause(s) of the Discharges all remedial actions undertaken to operate the East WWTP at the Maximum Treatable Flow during any discharges from CSO Outfall 103, and actions taken to prevent the recurrence of the Discharges.

State the status of installation of the influent pump and bar screen at the East WWTP.

State the status of the installation of baffles in the secondary treatment system clarifiers at the West WWTP

**Consent Decree Section VI.F.      Capacity Management, Operation, and Maintenance (“CMOM”) Program Activities**

State the status of the development and revision (as necessary) of the Capacity Management, Operation, and Maintenance (“CMOM”) Program Plan.

State the status of the preparation of the FOG Program for submittal and approval, including:

- Submittal of an updated list of Food Establishments (deleting closed establishments, identifying new establishments and/or owners or operators); and
- Development and submittal of public outreach materials made to communicate to commercial and residential sources of fat, oil and grease about the need to reduce the introduction of fat, oil, and grease to the Sewer Systems.

State all actions undertaken to implement the approved FOG Program, including:

- All revisions of regulations and/or ordinances, if any, with documentation of such revisions, to implement the Grease Control Program or indication that no revisions were necessary;
- All actions taken to enforce the aforementioned regulations and/ordinances, and a description of the results of any such enforcement actions;
- A list of actions taken to enforce FOG requirements during the 6 month reporting period, if any, and identification of whether the Food Establishment has been the subject of any prior enforcement action during the three years preceding the most recent action, and if so what additional enforcement actions have been taken;
- All permits issued, if any, to implement the requirements of the aforementioned regulations and/or ordinances; and
- The number of inspections of Food Establishment grease traps conducted during the 6 month reporting period and a percentage comparison to the total number of Food Establishments served by grease traps within the Defendants' service area during the 6 month reporting period.

State all activities undertaken pursuant to the approved CMOM Program, including:

- Total number of feet of Sewer Segments mechanically or chemically treated for root intrusion in each Sewer System (differentiating between the CSS and SSS in each Sewer System), the dates of such cleaning, the location of such Sewer Segments as identified on a GIS map (shapefile or similar electronic format), a percentage comparison of the feet of Sewer Segments cleaned as a comparison to the number of feet of Sewer Segments in the entire Sewer System, and an estimate of the number of feet of additional Sewer Segments planned for treatment for root intrusion the following six (6) month reporting period;
- Number of inspections of Pump Stations, the dates of each inspection at each Pump Station, the location of such Pump Station as identified on a GIS map (shapefile or similar electronic format), the results of such inspections, the Pump Stations not inspected and the reasons therefore;
- Cleaning and routine inspection of Sewer Pipes, as detailed below:

- Total number of miles of Sewer Segments 8 inches through 15 inches in diameter cleaned in each Sewer System (differentiating between the CSS and SSS in each Sewer System), the dates of such cleaning, the location of such Sewer Segments as identified on a GIS map (shapefile or similar electronic format), a percentage comparison of the feet of Sewer Segments cleaned as a comparison to the number of feet of Sewer Segments in the entire Sewer System, and an estimate of the number of feet of additional Sewer Segments planned for cleaning during the following 6 month reporting period;
- A list of Sewer Segments that had not been cleaned in the 8 years prior to the end of the reporting period;
- Number of feet of Sewer Segments 8 inches through 15 inches inspected. The location of such Sewer Segments shall be identified on a GIS map (shapefile or similar electronic format), including the dates of such inspections, the results of such inspections, and an estimate of the number of feet of Sewer Segments planned for inspection during the following 6 month reporting period;
- A list of Sewer Segments that had not been inspected in the 8 years prior to the end of the reporting period;
- Number of closed circuit television inspections of Sewer Segments where an SSO or CSS Release occurred, the location of such SSOs or CSS Releases, the dates of such releases and/or Discharges, the dates of such inspections, and the results of such inspections;
- Number of inspections of manholes, the location of such manholes as identified on a GIS map (shapefile or similar electronic format), including any manhole numbers, and dates and results of such inspections;
- Until completion and submittal on CMOM 3.0 to the Plaintiffs and approval of CMOM 3.0, state the status of the completion of all tasks undertaken to assess pump stations in the Sewer System.
- State the status of projects identified in the assessment of pump stations as required to achieve compliance with the Ten State Standards.
- Any other information documenting adherence to the CMOM Program not expressly described above.

**Consent Decree Section VI.G. Sewer Overflow Response Plan**

State the status of the development and revision of the Sewer Overflow Response Plan (“SORP”).

Upon approval of the SORP, describe all actions undertaken during the 6 month reporting period to implement the approved SORP during the 6 month reporting period, including

but not limited to training, development or revision of SOPs, development or revision of the SSO data management and tracking system, development or revision of outreach and educational materials, procedures for public notification, and application of the SORP in response to all SSOs or CSS Releases that occurred during the 6 month reporting period.

**Consent Decree Section VII.B. Completion and Implementation of the LTCP**

Until the completion and submittal to the Plaintiffs of the LTCP, state the status of the completion of the LTCP in accordance with the requirements of Appendix C.

Upon the completion and submittal of the LTCP, the semi-annual report should reference earlier submittals and approvals.

**Consent Decree Appendix C. Sewer System Assessment Report**

Until its completion and submittal to the Plaintiffs, state the status of development and submittal of the Sewer System Assessment Report (SSA).

Upon the completion, submittal, and approval of the SSA Report by the Plaintiffs, the semi-annual report should reference earlier submittals and approvals.

**Consent Decree Section VII.C. Sewer Systems Remedial Measures Plan (SSRM Plan)**

Until its completion and submittal to the Plaintiffs, state the status of the development of and submittal of the SSRM Plan.

Upon the completion, submittal, and approval of the SSRM Pan Report to the Plaintiffs, the semi-annual report should reference earlier submittals and approvals.

**Consent Decree Section VII. General IOCP Development and Implementation**

State the status of the development of and submittal of all submissions required under Appendix C.

State the status of completion of the Improvements and other remedial measures in the IOCP, including the SSRMP and LTCP, in accordance with the schedule contained therein.

**Any Other Information Necessary to Determine Compliance Status**

**Annual Statement or Certification**

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure

that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

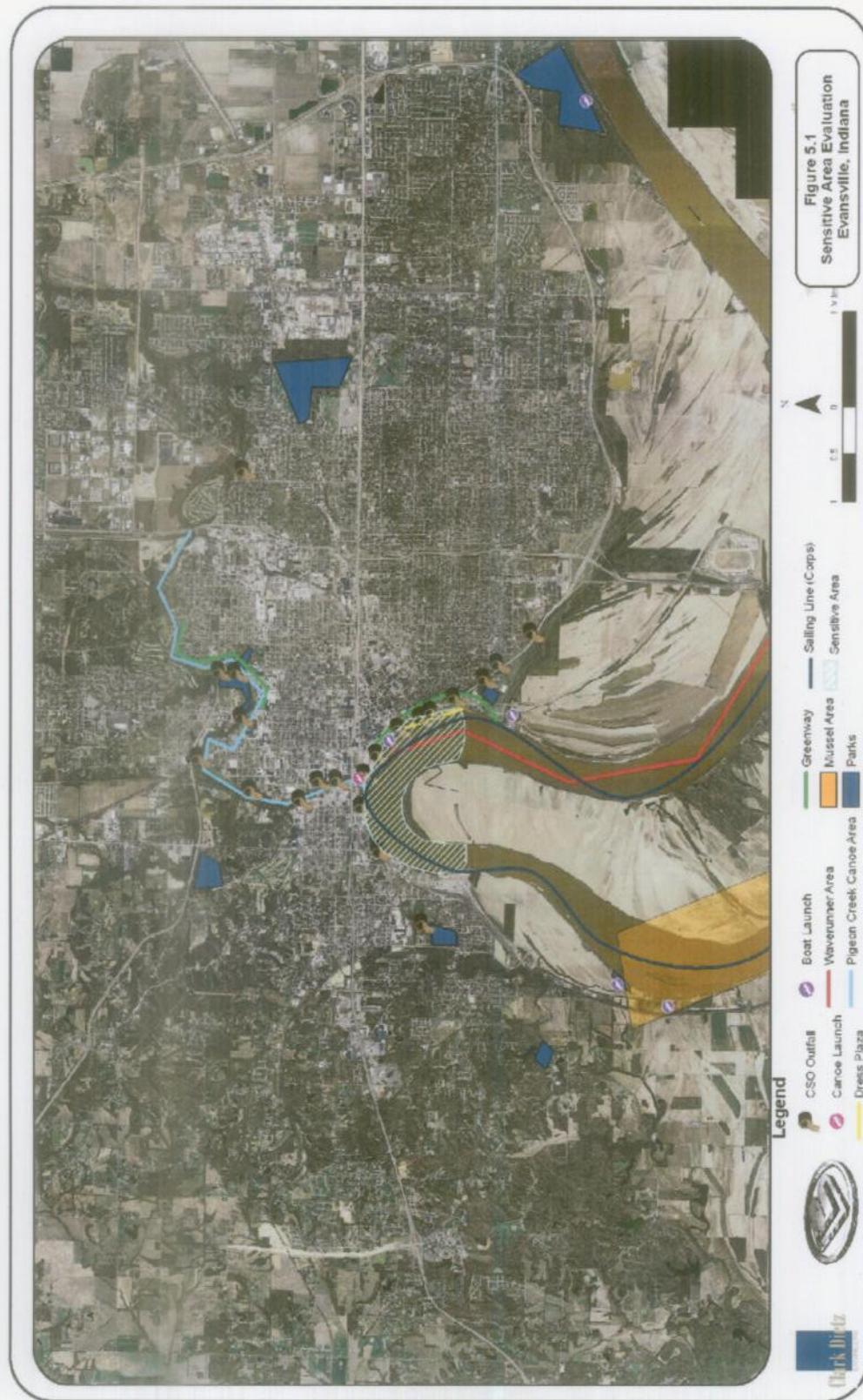
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[Signature of authorized official]

CONSENT DECREE APPENDIX E: Sensitive Area Determination

EPA-038630

February 2008



## **CONSENT DECREE APPENDIX F: Supplemental Environmental Project**

### **Description of Cave Avenue and Fickas Road Sewer Extension and Sewer System Connection Supplemental Environmental Project**

#### **Project Overview**

This Appendix describes the Supplemental Environmental Project (“SEP”) to be performed and funded by Defendants as a required by the accompanying Consent Decree.

Septic systems present both public health and environmental risks that can be avoided by connection to public sewers. A 2009 survey of unsewered areas in the City of Evansville identified two priority unsewered areas with antiquated septic systems near Cave Avenue (the “Cave Avenue Area”) and Fickas Road (the “Fickas Road Area”). The Cave Avenue Area is located in the northwest portion of the City of Evansville. The Fickas Road Area lies in the southeast portion of the City of Evansville. Although the areas occupy two distinct geographic regions of the City, they are both experiencing similar sewage disposal problems.

The Cave Avenue Area that will be served by a new municipal sanitary sewer line extension consists of a total of 143 residential lots of which 102 lots are currently developed. The Fickas Road Area that will be served by another municipal sanitary sewer line extension consists of a total of 12 residential lots of which 11 lots are currently developed. The existing, private systems in the Cave Avenue Area and Fickas Road Area are at or approaching the end of their useful lives as many of them have been in place since the 1960’s and 1970’s. Problems associated with current use of the existing septic systems in both areas would be eliminated by future use of new sanitary sewer line extensions required under this SEP.

Once the Defendants construct the sanitary sewer extensions, the Defendants will use existing authorities to ensure that all developed lots in the Cave Avenue Area and the Fickas Road Area are connected to the new sewer extensions. Indiana Code Section 13-26-5 requires a property owner to connect to a sanitary sewer system within three years if a sewer line is located within 300 feet of the property. Evansville Municipal Code Section 13.05.060 empowers the Utility to require connection to a public sewer with 90 days notice where a privately owned system cannot be properly maintained.

The Cave Avenue Area will be served by the Westside Wastewater Treatment Plant. The Fickas Road Area will be served by the Eastside Wastewater Treatment Plant.

#### **SEP Budget, Financing, and Implementation**

The estimated cost of constructing the sewer system extensions for the two areas is approximately \$5 million. More specifically, the current construction cost (planning level) estimate for both areas is approximately \$3,756,000 for Cave Avenue and \$1,273,000 for Fickas Road.