UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANACOSTIA WATERSHED SOCIETY, et al. **Plaintiffs**	) **Civ. Action No. 1:00CV00183TFH**
v.	)
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY	)
and	)
THE UNITED STATES **Plaintiff**	)
v.	)
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY	) **Civil Action No. 02-2511 (TFH)**
and	)
THE DISTRICT OF COLUMBIA,	)
Defendants.	)

CONSENT DECREE

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANACOSTIA WATERSHED SOCIETY, et al. **Plaintiffs** **v.** **DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY, et al.** **and** **THE UNITED STATES** **Plaintiff** **v.**	**Civ. Action No. 1:00CV00183TFH**
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY **and** **THE DISTRICT OF COLUMBIA,** **Defendants.**	**Civ. Action No. 1:02-02511 (TFH)**

CONSENT DECREE

WHEREAS, the Plaintiffs, Anacostia Watershed Society, Kingman Park Civic Association, American Canoe Association, Friends of the Earth, Sierra Club, and Mary Stuart Bick Ferguson ("Citizen Plaintiffs") have filed a Complaint against the District of Columbia Water and Sewer Authority ("WASA") and its General Manager, Jerry Johnson, pursuant to Section 505 of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 ("Clean Water Act" or "the Act"), 33 U.S.C. § 1365;

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint under Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d), against WASA for alleged violations of the Clean Water Act;

WHEREAS, the Complaints allege that WASA violated the Clean Water Act, 33 U.S.C. § 1251 et seq. ("the Act"), by failing to comply with the District of Columbia Water Quality Standards, effluent limitations and other conditions established in the National Pollutant Discharge Elimination System("NPDES") Permit No. DC0021199 issued to WASA by EPA under Section 402 of the Act, 33 U.S.C. § 1342, and by failing to properly manage, operate and maintain all collection, pumping facilities, treatment and/or combined sewer overflow ("CSO") control facilities or combined sewer systems operated by WASA;

WHEREAS, EPA has not delegated permitting authority to the District of Columbia under the Act and therefore is the permitting authority for WASA and the District;

WHEREAS, WASA submitted its NMC program to EPA prior to January 1, 1997; however, Plaintiffs allege that the program was inadequate and that WASA has failed to properly implement that program;

WHEREAS, the Citizen Plaintiffs, the United States and WASA enter into this Consent Decree to resolve the claims arising from WASA's alleged failure to implement the Nine Minimum Controls, as defined in EPA's April 19, 1994 CSO Control Policy published at 59 Fed. Reg. 18668, and to agree to the performance of certain projects set forth in Sections V., IX., and X. of this Consent Decree;

WHEREAS, the Parties to this Consent Decree intend that Plaintiffs' other claims, specifically including claims arising from alleged violations of the water quality standards of the District of Columbia and claims for long term injunctive relief, including WASA's obligation to prepare and implement a Long Term Control Plan, will not be resolved through this Decree. These other claims are not affected in any way by this Decree;

WHEREAS, WASA contends that, pursuant to Section 202 of its enabling legislation, which provides with certain exceptions not applicable here that WASA is subject to all laws applicable to offices, agencies, departments, and instrumentalities of the District of Columbia government, WASA is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. Sec. 1341 et seq.;

WHEREAS, WASA has consented to the consolidation of the action of the United States and the Citizen Plaintiffs;

WHEREAS, the United States, the Citizen Plaintiffs and WASA (the "Parties") agree, without adjudication of facts or law, that settlement of the Plaintiffs' Nine Minimum Controls claims in accordance with the terms of this Consent Decree is in the public interest and have agreed to entry of this Consent Decree without trial of any issues, and the Parties hereby stipulate that, in order to resolve the Nine Minimum Controls claims stated in the Plaintiffs' Complaints, this Consent Decree should be entered;

AND WHEREAS, settlement and entry of this Consent Decree does not constitute an admission of liability by WASA;

NOW THEREFORE, before taking any testimony, and without any adjudication

of any fact or law, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, and over the Parties hereto, pursuant to Sections 309 and 505 of the Clean Water Act, 33 U.S.C. §§ 1319, 1365 and 28 U.S.C. §§ 1331, 1345, 1355, and 1367. Venue is proper in the District of Columbia pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and 28 U.S.C. §§ 1391 and 1395(a).

II. APPLICATION AND SCOPE

2. The provisions of this Consent Decree shall apply to and be binding upon the Parties to this action, and their agents, employees, successors and assigns, as well as to all persons acting under the direction and/or control of WASA, including firms, corporations, and third parties such as contractors engaged in implementation of this Consent Decree.

3. WASA shall provide a copy of this Consent Decree to any consultant and contractor selected or retained to perform any activity required by this Consent Decree.

4. No later than thirty (30) days prior to transfer of any ownership interest, operation, management, or other control of the Combined Sewer Collection System, WASA shall give written notice and provide a copy of this Consent Decree to any such transferee or successor in interest. WASA shall require, as a condition of any such sale or transfer, that the purchaser or transferee agree in writing to be bound by this Consent Decree and submit to the jurisdiction of this Court for its enforcement. WASA shall also notify, in writing, EPA Region III, the United States Attorney for the District of Columbia, the United States Department of Justice, in

accordance with Section XX (Form of Notice) of this Consent Decree, of any such planned transfer at least thirty (30) days prior to the transfer.

III. OBJECTIVES

5. It is the express purpose of the Parties in entering this Consent Decree to further the objectives of the Act, as enunciated at Section 101 of the Act, 33 U.S.C. § 1251 et seq. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of ensuring that WASA complies with the Clean Water Act, all applicable Federal and local regulations, and the terms and conditions of WASA's NPDES Permit, and to meet the objectives of EPA's 1994 CSO Policy.

IV. DEFINITIONS

6. Unless otherwise defined herein, the terms used in this Consent Decree shall have the meaning given to those terms in the Clean Water Act, 33 U.S.C. § 1251 et seq., the regulations promulgated thereunder, and EPA's 1994 CSO Policy.

7. The following terms used in this Consent Decree shall be defined as follows:

"Award Construction Contract" means the date on which the construction contract agreement is signed by both WASA and the construction contractor.

"Blue Plains AWWTP" or "Blue Plains" means the District of Columbia Advanced Wastewater Treatment Plant at Blue Plains.

"Collection System" means the separate sanitary sewer and combined sewer systems within the District of Columbia.

"Combined Sewer Collection System" or "CSS" means the pipelines, pumping stations, treatment facilities and appurtenances in the District of Columbia which are designed to convey wastewaters and stormwater through a single pipe system to combined sewer overflow outfalls and/or treatment works. It includes the CSS and CSO facilities described in the NMC Report, as well as any future additions or modifications required by this Decree and the decree in the consolidated action if and when it is entered.

"Combined Sewer Overflow" or "CSO" means a discharge from the CSS at a CSO outfall designated in the Permit.

"1994 CSO Policy" or "EPA's 1994 CSO Policy" means EPA's April 19, 1994 CSO Control Policy, published at 59 Fed. Reg. 18688, and incorporated into the Clean Water Act pursuant to the Wet Weather Water Quality Act, Section 402(q) of the Clean Water Act, 33 U.S.C. § 1342(q).

"Dry Weather Overflow" means any discharge or overflow from the CSS that is not caused by stormwater or other wet weather event.

"Firm Sanitary Pumping Capacity" means the pumping rate with the largest pumping unit out of service on the sanitary side of the pumping station.

" Mgd" means million gallons per day.

"Nine Minimum Controls" or "NMC" means the controls as referenced and defined in EPA's 1994 CSO Policy.

"NMC Report" means the report entitled District of Columbia Water and Sewer Authority, EPMC III-Sewer Systems, "Combined Sewer System Nine Minimum Controls

Summary Report", Draft, July 1999 (Engineering Program Management Consultant III, Greeley and Hansen - Program Manager).

"NPDES Permit" means National Pollutant Discharge Elimination System (NPDES) permit number DC0021199 issued to WASA pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, and any future, extended, modified or reissued permit.

"Person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

"Place in Operation" means to achieve steady state operation and to operate consistently in such a way as to accomplish the intended function, even though all construction close-out activities (such as completion of a punchlist and resolution of contract disputes or close-outs) may not yet be completed.

"Required Approvals" means approvals and/or permits required from agencies of the District of Columbia Government (other than WASA itself), the Federal Government or any other governmental entity or private entity or person.

"Retain Program Manager and Finalize Design Contract" means award a program management contract and subsequently finalize a design contract.

"SCADA" means a supervisory control and data acquisition system that is designed to perform the functions described at pages 1-3 to 1-4 of the NMC Report.

"Submit Documents for Required Approvals" means the date by which completed applications have been submitted for all Required Approvals, except those Required Approvals, such as public space permits, which must be applied for after the Date of Award of Construction

Contracts.

"Swirl Facility" means the Northeast Boundary Swirl Facility located near RFK Stadium and which is designed to provide screening, removal of floatable material, some degree of solids separation, disinfection, and dechlorination for up to 400 MGD of flow from specific portions of the CSS.

V. COMPLIANCE PROGRAM AND SCHEDULES

8. WASA is ordered and enjoined to achieve and to maintain compliance with its NPDES Permit and the provisions of the Act, 33 U.S.C. § 1251 et seq., in accordance with the compliance program and schedules set forth below.

9. Proper Operation and Regular Maintenance ("O&M") for the CSS. On or before June 30, 2004, WASA shall submit to EPA WASA's written O&M program for review and comment, but not approval, by EPA. WASA shall implement the program, which shall be incorporated as part of this Consent Decree. The program shall include the following:

a. The organizations and positions responsible for various aspects of the O&M program;

b. The resources (i.e., positions and dollars) allocated to O&M activities;

c. Planning and budgeting procedures for O&M of the CSS;

d. A list of tide gates, overflow weirs, pump stations, camera trucks, Jet Vac trucks, and a list of activities to be undertaken at the Swirl Facility in the CSS;

e. An estimate of the lengths of sewers by pipe size, and of the number of manholes, catch basins, and regulators, based on an inventory performed by WASA that may incorporate

lists, maps or drawings as appropriate. WASA shall make the inventory available to Plaintiffs upon request.

f. Written procedures and schedules for conducting on a regular basis routine inspection and preventative maintenance of the CSS, including but not limited to the facilities that are subject to subparagraphs (d) and (e) above. Said procedures and schedules shall include customized field forms to be used by inspectors for field data collection and input to an O&M records system;

g. Written procedures, including procurement procedures, if applicable, for responding to emergency situations;

i. Training and management policies and procedures for ensuring that WASA personnel involved in the O&M program are qualified to perform their O&M responsibilities;

h. A process for periodic review and revision of the O&M program, including revision of the O&M program concurrently with any new CSS construction or facility upgrades.

j. Schedules, including maintenance frequencies, for performing all O&M procedures on a regular basis.

10. **Maximization of Storage in the Collection System**. WASA shall complete the following measures to promote maximization of storage of combined sewer flows within the CSS:

a. Replace Inflatable Dams: WASA shall replace all twelve existing inflatable dams with new inflatable dams that are fully operational and designed to perform their function to reduce the frequency and severity of CSO events. This project shall also include necessary

modifications to the control vaults to allow proper functioning of the new dams and interface with the existing SCADA system. WASA shall complete the foregoing work no later than the following schedule:

(i) WASA certifies that it has submitted documents for Required Approvals for this project prior to the date of lodging of this Decree.

(ii) WASA certifies that it has awarded the construction contracts for this project prior to the date of lodging of this Decree.

(iii) Place in Operation: **March 31, 2004.**

(iv) WASA thereafter shall ensure that the inflatable dams are maintained so that they fully perform their function of reducing the frequency and severity of CSO events.

b. <u>Tide Gate Repair and Replacement:</u>

(i) WASA shall repair or replace the tide gates at the following locations:

(a). CSO 004 (Structure #5) - Poplar Point Pump Station

(b). CSO 007 (Structure #9) - Outfall for 13th & Ridge SE

(c). CSO 009 (Structure #13) - 2nd St. and N Place NE

(d). CSO 013 (Structure #17) - 4th & N Place SE

(e). Structure at Independence Ave., east of 17th Street NW

(ii) All of the foregoing tide gate repair and replacement projects shall be completed no later than the following schedule:

(a). WASA certifies that it has submitted documents for Required Approvals for this project, prior to the date of lodging of this Decree.

(b). WASA certifies that it has awarded the construction contract for this project prior to the date of lodging of this Decree.

(c). Place in Operation: **November 10, 2003**

(d). WASA thereafter shall ensure that the tide gates identified in (i) above are maintained to meet the performance standard in (iii) below.

(iii) All tide gate maintenance, repair and replacement work referenced in Subparagraphs (i) and (ii) above shall prevent river water from entering the CSS, to the extent achievable with generally accepted design, engineering and maintenance practices.

(iv.) WASA shall also maintain and operate all other tide gates in the CSS so as to prevent river water from entering the CSS, to the extent achievable with generally accepted design, engineering and maintenance practices.

c. Catch Basins - WASA shall clean at least 85% of the catch basins in the CSS at least annually. WASA shall inspect catch basins in CSO areas tributary to the Anacostia at least two times per year and clean such basins more frequently as indicated by the inspections.

(i) WASA shall report to EPA in its regular Quarterly Reports, as set forth in Section VII (Reports), the status of catch basin cleaning described above.

d. Amendments to Sewer System Regulations: Within thirty (30) days after entry of this Decree WASA shall, in coordination with other agencies in the District of Columbia government, recommend specific measures to the District of Columbia government to limit, to the maximum extent practicable, the connection to the CSS of sump pumps, roof drains, foundation drains, and similar devices from any and all new construction and major renovations.

The recommendations shall include, but need not be limited to, amendments to the District of Columbia Municipal Regulations. Nothing in this subparagraph shall be construed as requiring WASA to act beyond its legal authority.

e. **Assurance of conveyance capacity:**

i.) WASA shall ensure that after September 1, 2008, WASA's Collection System on an on-going basis has the capacity to convey flows at a rate totaling at least 1076 mgd from the areas served by the Collection System to Blue Plains.

ii.) The September 1, 2008, date in subparagraph 10.e.i above shall be extended if all of the following requirements are met: a) WASA demonstrates no later than three years from the date of entry of this Decree through its long-term sewer evaluation and prioritization program, consistent with generally accepted engineering practices and industry standards (including, where appropriate, EPA guidance for sewer system evaluation and rehabilitation, "Sewer System Infrastructure Analysis and Rehabilitation", EPA Document 625/6-91/030, October 1991) that deficiencies in the CSS unknown to WASA as of the lodging of this Decree preclude compliance with subparagraph 10.e.i.; b) WASA further demonstrates that a date later than September 1, 2008, represents the earliest practicable date by which such deficiencies can be corrected; and c) WASA commits to take all action necessary to comply with Paragraph 10.e.i. by such later date. Any dispute over whether WASA has satisfied the foregoing requirements shall be resolved via the dispute resolution process in Section XIII (Dispute Resolution).

11. **Pretreatment**. WASA shall maintain and update its local industrial pretreatment program as required by the Clean Water Act, the General Pretreatment Regulations for Existing

and New Sources of Pollution set forth in 40 CFR Part 403 (Pretreatment Regulations), and its NPDES permit. WASA's local industrial pretreatment program is described in WASA's December 1996 report entitled "Combined Sewer Overflow Abatement Program – Nine Minimum Controls Compliance Report," the updates of the status of the pretreatment program set forth in WASA's July 1999 report entitled "Combined Sewer System Nine Minimum Controls Summary" and in WASA's February 18, 2000 report entitled "Combined Sewer System Nine Minimum Controls Action Plan Report."

12. **Maximization of Flow to the POTW for Treatment.**

a. WASA shall i) operate and maintain the Collection System and pumping stations to deliver the maximum flow possible to Blue Plains within the constraints of the pumping stations, configuration and capacity of the Collection System, and the capacity of Blue Plains; and ii) provide actual treatment of all flows conveyed to Blue Plains to the full degree and extent required by the Permit. To the extent that WASA's ability to accomplish these objectives is impeded by ongoing construction activity at Blue Plains, WASA may reduce flows to Blue Plains, in consultation with EPA, but only to the extent and for such time period as justified by such construction activity.

b. Main & O Pumping Station: WASA shall achieve a Firm Sanitary Pumping Capacity of 240 mgd at the Main Pumping Station, and a Firm Sanitary Pumping Capacity of 45 mgd at the O Street Pumping Station. WASA shall also replace or refurbish and thereafter maintain all tide gates associated with both pump stations, consistent with standards in paragraph 10.b.iii and iv. WASA shall complete the foregoing no later than the following schedule:

(i). WASA certifies that it has retained a program manager and finalized the design contracts for this project, prior to the date of lodging of this Decree.

(ii). Submit Documents for Required Approvals: **March 1, 2004.**

(iii). Award Construction Contracts: **April 1, 2005**

(iv). Place in Operation: **May 1, 2008**

(v) WASA thereafter shall ensure that it maintains the Firm Sanitary Pumping Capacity of 240 mgd at Main Street Pumping Station and of 45 mgd at the O Street Pumping Station described above.

c. <u>East Side Pumping Station:</u> WASA shall achieve a Firm Sanitary Pumping Capacity of 45 mgd at the East Side Pumping Station. WASA shall complete the foregoing no later than the following schedule:

(i) WASA certifies that it has retained a program manager and finalized the design contracts for this project, prior to the date of lodging of this Decree.

(ii) Submit Documents for Required Approvals: **June 1, 2003.**

(iii) Award Construction Contracts: **August 1, 2004.**

(iv) Place in Operation: **August 1, 2006.**

(v) WASA thereafter shall ensure that it maintains the 45 mgd Firm Sanitary Pumping Capacity described above.

d. <u>Poplar Point Pumping Station:</u> WASA shall achieve a Firm Sanitary Pumping Capacity of 45 mgd at the Poplar Point Pumping Station.

(i) WASA certifies that it has completed certain repairs and implemented certain

measures and has achieved a Firm Sanitary Pumping Capacity of 45 mgd at the Poplar Point Pumping Station prior to the date of lodging of this Decree.

(ii) WASA shall submit a pump test report or similar documentation to EPA to demonstrate that it has achieved the specified pumping capacity at the Poplar Point Pumping Station within 30 days of entry of this Consent Decree.

(iii) In the event EPA requires additional documentation or testing, or believes that other measures may be required, EPA shall request such additional information or measures and WASA shall comply with its request, subject to Section XIII (Dispute Resolution).

(iv) WASA shall ensure that it maintains the 45 mgd Firm Sanitary Pumping Capacity described above.

e. **Potomac Pumping Station:** WASA shall achieve a Firm Sanitary Pumping Capacity of 460 mgd at the Potomac Pumping Station. WASA shall complete the foregoing no later than the following schedule:

(i) WASA certifies that it has retained a program manager and finalized the design contracts for this project, prior to the date of lodging of this Decree.

(ii) Submit Documents for Required Approvals: **June 1, 2004.**

(iii.) Award Construction Contracts: **September 1, 2005.**

(iv.) Place in Operation: **September 1, 2008.**

(v.) WASA thereafter shall ensure that it maintains the 460 mgd Firm Sanitary Pumping Capacity described above.

f. Improvements at Blue Plains: WASA shall rehabilitate its grit facilities (Grit Chamber buildings 1 and 2), and influent screening facilities at Blue Plains as described in the Facilities Plan for Liquid Treatment Processes at Blue Plains (Metcalf & Eddy, Draft Report dated June 1999), no later than the following schedule:

(i) Submit Documents for Required Approvals: No later than ten (10) days from entry of this Decree.

(ii.) Award Construction Contracts: **July 31, 2003.**

(iii) Place in Operation: **July 31, 2007.**

g. Clean Eastside Interceptor: WASA completed a cleaning of the East Side Interceptor and the lower Section of the Northeast Boundary Sewer to remove excessive levels of silt buildup, as indicated in a report entitled "Documentation of Eastside Interceptor Cleaning," February 2002.

h. Anacostia Siphons: WASA conducted an inspection and evaluation of the three 60-inch siphons crossing under the Anacostia River to determine their physical condition and cleanliness, as documented in a report entitled "Sonar Inspection of Anacostia Siphons," February 2002.

i. The inspection and cleaning activities described in paragraphs g. and h. above are continuing obligations. WASA agrees to inspect these facilities not less than once every five (5) years for the Eastside Interceptor and not less than once every ten (10) years for the Anacostia Siphons, and to clean and to repair the facilities if necessary.

13. CSO Discharges During Dry Weather.

WASA shall take the following actions with the objective of preventing Dry Weather Overflows:

a. <u>System Modifications to Prevent Dry Weather Overflows:</u> WASA shall design, construct and implement measures to correct regulator and/or CSS deficiencies that cause or contribute to Dry Weather Overflows at the following CSO outfalls: 007, 027, 005, 020, 023, 015, 014, 024. WASA shall complete all of the foregoing within the following schedule, giving consideration to addressing, where practicable, outfalls having more frequent Dry Weather Overflows before outfalls having less frequent Dry Weather Overflows:

(i) WASA certifies that it has submitted documents for Required Approvals for this project.

(ii) WASA certifies that it has awarded the construction contract for this project.

(iii) Place in Operation: **December 31, 2003.**

b. <u>Facilitate Reports from Public of Dry Weather Overflows:</u> WASA will facilitate public reporting of Dry Weather Overflows by providing and maintaining information on WASA's Web site explaining how the public can identify and report Dry Weather Overflows to WASA, and providing the same information in semi-annual information pamphlets or inserts required by subparagraph 16(b)(ii) of this Decree. The Web site and information pamphlets or inserts shall include a WASA phone number that members of the public can call to report Dry Weather Overflows, and WASA shall maintain and staff that phone line with persons trained to receive such reports.

c. <u>Dry Weather Overflow Management Program:</u> As continuing obligations during the duration of this Consent Decree, WASA agrees to:

(i) implement and comply with the "CSS Dry Weather Overflow Management Program" as set forth in Attachment 1 hereto.

(ii) make available video cameras to inspection staff in order to develop a visual record of conditions inside the regulator structures, identify existing and potential causes of Dry Weather Overflows, and document unusual conditions encountered during the inspections.

(iii) provide training to inspection staff to ensure that they are qualified to properly use the video equipment.

d. **Control of Construction Debris:** WASA shall improve coordination with the D.C. Department of Health and the D.C. Department of Consumer and Regulatory Affairs for erosion/sediment control. In particular, WASA shall encourage appropriate notice of construction activities from those agencies and full implementation of WASA's Memoranda of Understanding developed as part of the District of Columbia Municipal Storm Water Program.

14. Control of Solids and Floatable Material in CSOs.

WASA shall conduct visual wet weather surveys at Outfalls 009 through 012 to assess the extent of floatables discharged, in accordance with the assessment procedures dated March 10, 2003, and appended at Attachment 2. The results of such surveys shall be reported in the quarterly reports to EPA (Reporting - Section VII).

15. Pollution Prevention Programs. WASA shall maintain its pollution prevention programs being undertaken in conjunction with the District of Columbia's ongoing Municipal Separate Storm Sewer System (MS4) Permit (Permit DC0000221) that will take place in geographic areas that have an impact on the combined areas of the sewer system. WASA's

pollution prevention programs are described in WASA's December 1996 report entitled "Combined Sewer Overflow Abatement Program Nine Minimum Controls Compliance Report," the updates of the status of the pollution prevention programs set forth in WASA's July 1999 report entitled "Combined Sewer System Nine Minimum Controls Summary" and in WASA's February 18, 2000 report entitled "Combined Sewer System Nine Minimum Controls Action Plan Report." WASA shall also maintain its efforts to educate the public about pollution prevention, including periodically describing, in its CSO newsletters, steps that the public should take to reduce the amount of trash swept into the combined sewers during storm events that may be subsequently discharged to receiving waters, and the continued inclusion of information about suggested pollution prevention in the appropriate areas of WASA's web site.

16. <u>Public Notification.</u>

a. <u>Signs:</u>

(i) WASA will maintain warning signs at all CSO outfalls as required by the Permit. Signs on National Park Service property will conform to National Park Service requirements in lieu of any conflicting requirements in the Permit. WASA will conduct inspections of all sign locations at least monthly to ensure that each sign is in place, unobstructed, and in good condition. Missing signs shall be replaced within thirty (30) days after WASA learns they are missing, and damaged or obstructed signs shall be corrected within thirty (30) days of discovery. Obstructed signs on National Park Service property shall be cleared of the obstruction within thirty (30) days after WASA receives approval from the National Park Service to remove the obstruction, which approval shall be sought within ten (10) working days after WASA learns of

the obstruction.

(ii) Not later than thirty (30) days from entry of this Decree, WASA will apply to the National Park Service for permits to install new signs at each of the following CSO outfalls: 005-008, 016-029. These new signs shall be designed to inform the public of a possible public health hazard from CSOs, especially during rain events. The new signs shall be 3 ft. x 4 ft. in size and substantially the same as shown in Attachment 3 hereto. These signs shall operate in lieu of the sign requirements at subparagraph a.(i) of this Paragraph at the outfalls where these signs are installed. Plaintiffs agree to assist WASA, in a manner to be determined in Plaintiffs' discretion, in its efforts to obtain permits from the National Park Service, as necessary, for the signs. Within one hundred eighty (180) days of National Park Service approval, WASA shall install such signs, and shall maintain them thereafter in like manner as required by subparagraph a.(i) of this Paragraph. The Plaintiffs waive any claims of non-compliance based on discrepancies between the requirements of this Paragraph and the terms of the NPDES Permit.

(iii) Not later than one hundred eighty (180) days from entry of this Decree, WASA shall install two 3 ft. x 4 ft. signs substantially the same as shown in Attachment 3 hereto at the following CSO outfalls: 009-012 [WASA controlled sites] and one such sign each at outfalls 001 and 003. These signs shall operate in lieu of the sign requirements at subparagraph a.(i) of this Paragraph at the outfalls where those signs are installed. After installation, WASA shall maintain such signs in like manner as required by subparagraph a.(i) of this Paragraph. The Plaintiffs waive any claims of non-compliance based on discrepancies between the requirements of this Paragraph and the terms of the NPDES Permit.

(iv) Subject to required consents and approvals, WASA shall install 3 ft. x 4 ft. signs substantially the same as shown in Attachment 3 hereto at each of the following CSO outfalls: 013-015 [Southeast Federal Center and Navy Yard sites], 041-045 [National Zoo sites]. WASA shall complete installation of each sign within one hundred eighty days (180) days of receiving required consent and approval, which WASA shall apply for not later than thirty (30) days from entry of this Decree. Where no consents or approvals are required, WASA shall complete installation not later than one hundred eighty (180) days from entry of this Decree. These signs shall operate in lieu of the sign requirements at subparagraph a.(i) of this Paragraph at the outfalls where these signs are installed. After installation, WASA shall maintain such signs in like manner as required by subparagraph a.(i) of this Paragraph. Plaintiffs waive any claims of non-compliance based on discrepancies between the requirements of this Paragraph and the terms of the NPDES Permit.

b. Public Notification: WASA shall take the following additional actions to notify the public of CSO occurrences and CSO impacts:

(i) **Web site information:** WASA shall post and maintain on its web site accurate and up-to-date CSO information that includes the following:

(a) An explanation of the nature and causes of CSO discharges, and the health threats they present, including the following: (1) What is a CSO?; (2) Why/how do CSO discharges occur?; (3) What is a dry weather overflow and how does it differ from wet weather overflows?; (4) What are the potential environmental and public health impacts of these discharges?; (5) What can the public do to help (including information on how the public can

report Dry Weather Overflows)?; (6) Where can the public get more information:?

(b) The site shall also provide a general warning about use of receiving waters during and after CSO events.

(c) A description of the location of each CSO outfall, including maps that clearly show the location of each outfall.

(d) Information on the annual volume of CSO discharges from each outfall, based on modeled data. The website shall indicate clearly where results are based on modeling. Nothing herein shall preclude the posting of monitored data on the web site in addition to the modeled data.

(e) Outfall-specific information on the level of rainfall that creates a reasonable potential for CSO discharges, and the expected duration of such discharges.

(f) Record of CSO events, including, for each outfall, the number of CSOs, maximum and minimum duration of CSO events, and the total CSO volume for each outfall in the prior three-month calendar quarter, based on modeled results. The website shall indicate clearly where results are based on modeling. Nothing herein shall preclude the posting of monitored data on the web site in addition to the modeled data.

(g) The twelve most recent quarterly reports for the Combined Sewer Overflow Facilities, starting with the first quarterly report following entry of this Consent Decree. Each report shall contain all the information listed in Attachment 7. Each quarterly report shall be posted to the web site within twenty (20) days of completion of the report.

(ii) Information Pamphlets or Inserts: WASA shall prepare and distribute semi-

annually an information pamphlet or insert in water bills with the information specified in subparagraph b.(i)(a) of this Paragraph, and information on CSO locations, general information on the frequency, volume and location of CSO discharges, and the address of WASA's web site. WASA shall also distribute such pamphlets or inserts semi-annually to boat rental facilities, marinas, rowing clubs, tackle shops, and other public locations along the affected river segments, to the extent permitted by owners of those locations, and to other groups that have expressed an interest in receiving such information.

(iii) Notification lights at boating locations: WASA shall install and operate two lights, one each on the Anacostia River and the Potomac River, to notify river users of CSO events. Lights shall be operated by a signal from a representative outfall on each river. A red light shall be illuminated during a CSO occurrence and a yellow light shall be illuminated for 24 hours after a CSO has stopped. Final colors shall be subject to approval by the Coast Guard or other agency having jurisdiction (other than WASA itself), to the extent that such approval is legally required. If such approval is denied, WASA shall utilize light colors that resemble those specified above as nearly as the approval authority will allow. The mounting and brightness of each light shall be subject to the approval of owners or agencies (other than WASA itself) having jurisdiction (e.g. private property owners, Coast Guard, National Park Service) to the extent that such approval is legally required. Each light shall be mounted at such a height and shall be of a brightness so as to be visible during daylight with the naked eye by boaters on the water having an unobstructed horizontal view of the light. If such approval is denied, WASA shall install the lights as close to the above criteria as the approval authority will allow.

(a) The Anacostia River light shall be located at or in the immediate vicinity of CSO outfalls 010-012. The Potomac River light shall be located on an elevated post or pole at Thompson's Boat House. The location of each light shall be subject to the approval of owners or agencies (other than WASA itself) having jurisdiction (.e.g. private property owners, Coast Guard, National Park Service), to the extent that such approval is legally required. If such approval is denied as to either location, WASA shall utilize an alternative location that is as close as the approval authority will allow to the relevant location specified above.

(b) The Anacostia River light shall be operated by a signal from CSO Outfall #007 (13th Street and Ridge Place SE). The Potomac River light shall be operated by a signal from CSO Outfall #021 (Northeast of Roosevelt Bridge, NW).

(c) The Anacostia and Potomac Rivers lights shall be installed on the following schedule:

(i) Submit Documents for Required Approvals: **December 31, 2003**

(ii) Place in Operation: **Twenty months after receipt of all Required Approvals.**

(d) WASA shall include information on the purpose and description of the above-described light system: a) on the WASA website; b) in the information pamphlets or inserts referenced in subparagraph b.(ii) of this Paragraph; and c) on signs posted at or adjacent to each warning light location and readable from both land and the water.

17. <u>Monitoring.</u>

a. Report overflow occurrences [Remote -Monitored Outfalls]: WASA shall

monitor and report to EPA (in quarterly reports) on the number and approximate duration of overflow occurrences at each of the following CSO structures: ##1, 1A, 2, 4, 5, 14, 15, 15A, 16, 24, 34, 35 and 52.

b. Modeling: Modeled data or results required under this Decree shall be derived from the CSS computer model used in the development of WASA's Long Term Control Plan, with quality assurance and quality control meeting generally accepted engineering practices and industry standards. Upon reasonable request by the Citizen Plaintiffs or the United States, WASA shall make available to the requesting party or parties monitoring and modeling data and reports.

VI. FUNDING

18. Compliance with the terms of this Consent Decree by WASA is not conditioned on the receipt of federal or state grant funds or upon WASA's financial capabilities, subject solely to a force majeure event due to the Anti-Deficiency Act provisions in Section XII (Force Majeure). In addition, subject solely to a force majeure event due to the Anti-Deficiency Act provisions in Section XII (Force Majeure), failure to comply is not excused by the lack of federal or state grant funds, or by the processing of any applications for the same, or by WASA's financial capabilities. WASA reserves the right to request modification of the compliance dates in this Decree if it experiences significant adverse changes in its financial capabilities. Plaintiffs reserve the right to approve or to reject WASA's requested modification.

VII. REPORTING

19. Beginning with the first CSO Quarterly Report due after lodging of this Consent

Decree, and for every calendar quarter thereafter until this Consent Decree terminates in accordance with Section XXV, (Termination), below, WASA shall submit written status reports to EPA and to the Citizen Plaintiffs by the 28th day of the month following the end of the calendar quarter. In each report, WASA shall provide the following:

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

b. a general description of the work completed within the three-month period, and a projection of work to be performed pursuant to this Consent Decree during the next three-month period. Notification to U.S. EPA and to the Citizen Plaintiffs of any anticipated delay shall not, by itself, excuse the delay; and

c. all other items as specified in Section V (Compliance Program and Schedules) of this Consent Decree including the status of the catch basin cleaning (Paragraph 10.c).

VIII. CIVIL PENALTY

20. In full settlement, satisfaction, and discharge of the United States' and Citizen Plaintiffs' civil penalty claims for the violations alleged in their Complaints through the date of lodging of this Decree, WASA shall pay a civil penalty in the amount of $250,000 within thirty (30) days after entry of this Consent Decree.

21. In the event that full payment is not made within thirty (30) days after entry of this Consent Decree, WASA shall pay interest on the balance due, at the rate provided in 28 U.S.C. § 1961(a), that is, a rate equal to the coupon issue yield equivalent (as determined by the Secretary

of Treasury) of the average accepted auction price for the last auction of 52-week U.S. Treasury bills settled prior to the date of lodging of this Consent Decree. Interest shall be computed daily and compounded annually.

22. WASA shall make the civil penalty payment by Electronic Funds Transfer ("EFT") to the United States Department of Justice lockbox bank, referencing the Civil Action Number, DOJ case number 90-5-1-1-07137, and United States Attorney's Office File Number No. 02-02511 (TFH). Payment shall be made in accordance with the instructions provided by the United States upon execution of this Consent Decree. Any EFTs received at the United States Department of Justice lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next business day. WASA shall simultaneously send notice of the EFT to the following addresses:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, D.C. 20005
Re: DOJ No. 90-5-1-1-07137

Chief, Water and General Law Section (3RC20)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

David Baron
Earthjustice
1625 Massachusetts Avenue, NW, Suite 702
Washington, DC 20036

IX. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

23. WASA shall undertake to perform one or more Supplemental Environmental

Projects ("SEPs"), which the Parties agree are intended to secure significant environmental protection and improvements which are not otherwise required by law. WASA's SEPs shall consist of the construction, operation and maintenance of rain gardens and other low impact development ("LID") or LID retrofits ("LIDR"), and are more fully described in Attachment 4 hereto.

24. WASA's total expenditure for the development and implementation of the SEPs (including the cost of operating and maintaining the SEPs and performing post-construction monitoring) shall not be less than $1,700,000. WASA shall submit for EPA review and approval a detailed Scope(s) of Work within one hundred eighty (180) days of entry of this Decree that will identify each LID and/or LIDR project and the exact location of each LID and/or LIDR project, and for each such project shall identify the type of project, its specifications and dimensions, and its projected cost. The Scope of Work will also include project schedules, including a date for submission of documents for all required approvals, a start date, interim deadlines, and date of completion of each LID and/or LIDR project. An estimate of the volume of surface water diverted from the CSS will also be included. The completion date for placing each of the LID and/or LIDR projects into operation shall be no more than three (3) years and six months from entry of this Decree.

25. Within 120 days of EPA's approval of its Scope of Work, WASA shall include in its CSO Quarterly Reports to EPA, with copies to Citizen Plaintiffs, written summaries which at a minimum describe (a) the actions which have been taken with respect to the SEPs during the previous calendar quarter; (b) all actions planned to be taken in the next quarter with respect to

the SEPs; (c) any impediment which may delay a project's progress or completion, and any actual delays or potential delays in the work and any actions taken or to be taken to prevent future delays; and (d) an itemized accounting of costs expended for each SEP during the quarter.

26. In any prepared materials intended for public dissemination and any prepared broadcast announcements made by WASA which refers to any SEP undertaken pursuant to this Consent Decree, WASA shall state in a prominent manner that the project is being undertaken as part of a Consent Decree entered into to comply with the Clean Water Act.

27. WASA shall submit a SEP Completion Report to EPA and Citizen Plaintiffs upon completion of the SEP. The Report shall contain the following information: (a) a detailed description of the SEP implemented; (b) a description of any operating problems encountered and the solutions thereto; (c) a verified and sworn statement of the itemized and total net costs of the SEP, with supporting documentation; (d) a certification that the SEP was fully implemented pursuant to the terms of this Consent Decree; and (e) a description of the environmental and public health benefits resulting from implementation of the SEP.

28. WASA shall continuously use or operate and maintain the SEP projects for not less than five (5) years.

29. WASA hereby certifies that neither it or any other person as that term is defined in the definitions section above is required to perform or develop the SEP by any Federal, State, or local law or regulation; nor is WASA or any other person as that term is defined in the definitions section above required to perform such SEP by agreement, grant, or as injunctive relief in this or any case or in compliance with State or local requirements. WASA further

certifies that it has not received, and is not presently negotiating, to receive credit for the SEP in any other enforcement action.

30. WASA recognizes and agrees that the SEP cannot be funded directly or indirectly, whole or in part, from any grant or source of funds which is received from the United States, including, but not limited to, EPA, low interest federal loans, federal contracts or federal grants.

X. CITIZEN COMMUNITY PROJECT

31. Not later than thirty (30) days from the date of entry of this Decree, WASA shall pay to the Chesapeake Bay Foundation a total of $300,000 for design, installation, and maintenance of green roof demonstration projects in the District of Columbia, within the area served by the CSS in the Anacostia River watershed. The purpose of these projects shall be to demonstrate the potential effectiveness of green roofs in reducing stormwater pollution runoff into the CSS, and in providing other environmental benefits. A general description of green roofs is provided in Attachment 5 attached hereto.

32. The Chesapeake Bay Foundation shall provide the Parties with annual reports, beginning with the first anniversary of the entry of this Consent Decree, describing the status of the projects and expenditures. Five (5) years after entry of this Decree, the Chesapeake Bay Foundation shall return to WASA any funds not expended with interest for the purposes described in this Section, and provide the Parties with an accounting of the funds expended. Within sixty (60) days of receipt of the return of any such funds, the Citizen Plaintiffs shall designate another entity that shall submit a proposal for a new environmental project to be implemented in the District of Columbia to the Citizen Plaintiffs for their approval, and shall

implement such proposal upon approval. If the Citizen Plaintiffs and the newly designated entity are not able to agree on a new environmental project within six months of return of the funds, then WASA shall pay the unexpended funds with interest to another third party conservation group to be designated by the Citizen Plaintiffs for an environmental project to be implemented in the District of Columbia.

33. The Chesapeake Bay Foundation's agreement to accept and use the $300,000 in accordance with the above-described conditions is attached hereto as Atttachment 6.

XI. STIPULATED PENALTIES

34. (a) WASA shall pay to the United States, upon demand, stipulated civil penalties in the following amounts for each day it fails to meet any deadlines or satisfy any of the requirements set forth in subparagraph (b) below.

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 1,500
31st to 60th Day	$ 3,000
After 60 Days	$ 6,000

(b) The stipulated penalties in subparagraph 34 (a) above shall apply to the requirements set forth in:

Paragraph 10 (Maximum Storage in the Collection System), except for Paragraphs 10.c (Catch Basins) and 10.d (Amendments to Regulations)

Paragraph 12 (Maximum Flow to POTW)

Paragraph 13 (Dry Weather Overflows)

35. (a) WASA shall pay to the United States, upon demand, stipulated civil penalties in the following amounts for each day it fails to meet any of the deadlines or satisfy any of the requirements set forth in subparagraph (b) below.

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 1,000
31st to 60th Day	$ 2,500
After 60 Days	$ 5,000

(b) The stipulated penalties in subparagraph (a) above shall apply to the requirements set forth in:

Paragraph 9 Operation and Maintenance including subparagraphs a. through e. (update procedures, field forms, TV camera trucks, preventive maintenance procedures, catch basin cleaning)

Paragraph 10.d (Amendments to Regulations)

Paragraph 14 (Floatable Control, including visual survey and Reporting)

Paragraph 16 (Public Notification, including Subparagraphs a. Signs, and b. Notification)

Paragraph 17 (Monitoring, including subparagraphs a. Routine monitoring and b. Overflows)

36. (a) WASA shall pay to the United States, upon demand, stipulated civil penalties in the following amounts for each day it fails to meet any deadlines or satisfy any of the requirements set forth in subparagraph (b) below.

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 500

31st to 60th Day	$ 1,000
After 60 Days	$ 2,500

(b) The stipulated penalties in subparagraph 36 (a) shall apply to the requirements set forth in:

Paragraph 10.c (Catch Basins)

Paragraph 19 (quarterly status reports)

Paragraph 14 (floatable reports)

37. For each day WASA fails to pay the United States the civil penalty amount specified in Section VIII above, WASA shall pay stipulated civil penalties in the amount of $2,500 per day.

38. Other Violations: If WASA fails to comply with a requirement or provision of this Decree not expressly listed above, it shall be liable for stipulated penalties as follows:

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 500
31st to 60th Day	$ 1,000
60th day until submitted	$ 2,000

39. Stipulated Penalties for Supplemental Environmental Project. If WASA does not complete a SEP, but EPA determines that WASA has made a good faith effort to complete the SEP and WASA certifies that at least 90 percent of the amount of money required to be spent was expended on the SEP, WASA will not be liable for any stipulated penalty related to the SEP.

40. If WASA does not complete a SEP, or EPA determines that the SEP has not been

completed satisfactorily, and/or if WASA fails to expend or obligate the full $1,700,000 on the SEP in accordance with the SEP Scope of Work, WASA shall pay any portion of that amount not expended or obligated on the SEP up to $1,700,000, to the United States Treasury as an additional civil penalty.

41. General Provisions: Stipulated civil penalties shall automatically begin to accrue on the first day WASA fails to meet any of the schedules of performance required by this Consent Decree or satisfy any obligation or requirement of this Consent Decree and shall continue to accrue each day until WASA achieves compliance with such schedule, obligation or requirement.

42. Stipulated civil penalties shall be paid within thirty (30) days of the date of a demand for payment of stipulated civil penalties for any non-compliance with any of the schedules of performance or requirements set forth in this Consent Decree. Prior to issuing a demand for stipulated penalties, the Citizen Plaintiffs and the United States shall confer to determine whether or not to make a joint demand.

43. In the event that a stipulated penalty is not paid according to the instructions in a written demand from the United States or the Citizen Plaintiffs, the stipulated civil penalty shall be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961(a).

44. Stipulated civil penalties shall be paid electronically or, if the amount is less than $50,000, by submitting a certified or cashier's check, in accordance with the instructions provided by the United States at the time stipulated penalties are demanded. Simultaneously,

WASA shall send copies of the certified or cashier's check, or confirmation of the EFT, together with a letter describing the basis for the penalties, to Chief, Environmental Enforcement Section, United States Department of Justice, Post Office Box 7611, Ben Franklin Station, Washington, D.C. 20044, and to Section Chief, NPDES Branch, Office of Compliance and Enforcement, Water Protection Division, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, and Earth Justice, 1625 Massachusetts Avenue, NW, Suite 702, Washington, DC, 20036. The transmittal letter shall reference the caption, civil action number, and DOJ number 90-5-1-1-07137.

45. Subject to Section XVII (Effect of Decree), payment of stipulated civil penalties as set forth above shall be in addition to any other rights or remedies which may be available to the Citizen Plaintiffs and/or the United States or its agencies by reason of WASA's failure to comply with the requirements of this Consent Decree and all applicable Federal, state or local laws, regulations, wastewater discharge permit(s) and all other applicable permits. Where a violation of this Consent Decree is also a violation of such laws, regulations, or permits, WASA shall be allowed a credit, in the amount of any stipulated penalties paid, as a set-off against any statutory penalties imposed for such violation.

46. If WASA invokes dispute resolution and the Court resolves the dispute against WASA, stipulated penalties which have accrued during the pendency of the dispute shall be payable, as set forth herein, upon resolution of the dispute; provided, however, that WASA shall be liable only for sixty (60) days of stipulated penalties during the pendency of the dispute in the event the Director of the Water Protection Division requires more than sixty (60) days to issue a

final agency decision concerning the dispute, as set forth in Section XIII (Dispute Resolution).

XII. FORCE MAJEURE

47. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of WASA or the control of any entity controlled by WASA, including its consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree. Nothing in this Section is intended to relieve WASA of its duty to exercise due diligence to complete the requirements of this Consent Decree in a timely manner or of WASA's obligation to meet all discharge limitations and other obligations contained in the NPDES Permit. Unanticipated or increased costs or changed financial circumstances are not Force Majeure events, except as provided in Paragraph 49 below.

48. **Permitting:** 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 necessary to meet the requirements of this Consent Decree, are not Force Majeure events. However, failure of a permitting authority to issue a necessary permit in a timely fashion is an event of Force Majeure where the failure of the permitting authority to act is beyond the control of WASA and WASA demonstrates that it has taken all steps available to it to obtain the necessary permit or approval, including but not limited to:

a. Promptly providing reasonably known permitting or approval authorities with copies of this Consent Decree, when lodged, and briefing each such authority, both orally and with written materials if necessary, on the projects and schedules contained therein in order to coordinate permitting submittals and approvals;

b. submitting a complete permit application by the deadlines set forth in this Decree;

c. responding to requests for additional information by the permitting or approval authority in a timely fashion;

d. making regular inquiry, approximately every forty-five (45) days, both verbally and in writing, with the permitting or approval authority after initial or supplemental permit filings, to determine the status of the permit or approval application;

e. seeking relief from higher management officials within the permitting or approval authority where permit processing delays threaten to cause noncompliance with any deadline in this Decree;

f. accepting lawful permit or approval terms and conditions; and

g. prosecuting appeals of any unlawful terms and conditions imposed by the permitting or approval authority in an expeditious fashion.

49. **Anti-Deficiency Act Events:** Nothing in this Decree shall be construed to require an expenditure, obligation or contract in violation of the Anti Deficiency Act, 31 U.S.C. Sec. 1341 et seq. Where an expenditure, obligation or contract is subject to the Anti-Deficiency Act, WASA's obligations shall be subject to the availability of appropriated funds as follows:

(a) WASA must initially identify the portion of its budget that is comprised of appropriated funds, identify the other components of its funding, and demonstrate why the unavailability of the appropriated funds will delay specific obligations;

(b) To the extent made necessary by lack of appropriated funds, WASA may

obtain deferral of compliance with an obligation of this Consent Decree until its next annual budget cycle if, within sixty (60) days after the date WASA knew or should have known of the event described in paragraph (b)(iv) below, it provides in writing to the United States a statement which shows the following:

(i) That pursuant to D.C. Official Code Sec. 1-204.45a (2001), it included in its annual budget, which accompanies the District of Columbia budget submitted to the President for transmission to the Congress pursuant to Section 446 of the D.C. Self-Government and Governmental Reorganization Act, D.C. Official Code Sec. 1-204.46 (2001), sufficient money to carry out such objective;

(ii) That it made diligent efforts to obtain Congressional enactment of that part of the budget act;

(iii) That it expressly identified in the annual fiscal year adopted budget prepared for Congressional use such obligation (not necessarily to include reference to this Decree as such) together with the amount of money tied to performing such obligation; and

(iv) That Congress acted expressly to eliminate such amount of money or to reduce it below the level necessary to perform the obligation, or that Congress made an across the board reduction in WASA's appropriation as shown in WASA's adopted budget without expressly saving such obligation and the across the board reduction, as applied proportionately to the amount of money shown in the adopted budget for such obligation, left an insufficient amount to carry out that obligation.

50. General Requirements: When circumstances are occurring or have occurred

which may delay the completion of any requirement of this Consent Decree, whether or not due to a Force Majeure event, WASA shall so notify the United States and the Citizen Plaintiffs, in writing, within fifteen (15) days after WASA knew, or should have known, of the delay or anticipated delay. The notice shall describe in detail the bases for WASA's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to so notify the United States and the Citizen Plaintiffs shall constitute a waiver of any claim of Force Majeure as to the event in question.

51. If the United States and the Citizen Plaintiffs find that a delay in performance is, or was, caused by a Force Majeure event, they shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XIII shall apply and WASA shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

52. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend another compliance date or dates. WASA shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. WASA may petition for the extension of

more than one compliance date in a single request.

XIII. DISPUTE RESOLUTION

53. This Court shall retain jurisdiction for the purpose of adjudicating, in the manner provided by this section, all disputes among the parties that may arise under the provisions of this Consent Decree, exclusive of modifications pursuant to Section XXII, Paragraph 84 (minor modifications). Unless otherwise expressly provided in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States and the Citizen Plaintiffs to enforce obligations of WASA that have not been disputed in accordance with this Section.

54. Permit action pursuant to 40 C.F.R. Part 124, including issuance, denials, and modifications, shall not be subject to this Consent Decree, but rather shall continue to be handled through the administrative and judicial procedures set forth in those regulations.

55. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute, with written notice to all Parties. Notice of the dispute shall be provided no later than fourteen (14) days from the date of the circumstances giving rise to the dispute. A party may join the dispute by providing written notice to the other parties of its decision to do so within fourteen (14) days of receipt of such notice. The period for informal negotiations shall not exceed twenty (20) days from the date of the original notice of the dispute, unless the parties to the dispute otherwise agree in writing to extend that period.

56. If the informal negotiations are unsuccessful, the position of the United States shall control unless, within twenty (20) days after the conclusion of the informal negotiation period, the party who initiated the informal dispute resolution period invokes the formal dispute resolution procedures of this Section by serving on the other Parties a written Statement of Position on the matter in dispute, which shall set forth the nature of the dispute with a proposal for its resolution as well as any factual data, analysis or opinion supporting that position and any supporting documentation relied upon.

57. Within thirty (30) days of the receipt of a Statement of Position, pursuant to this Section, any opposing party may serve on the other Parties its own Statement of Position, which may include an alternate proposal for resolution of the dispute as well as any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by that party. Within 15 days after receipt of such Statements, the disputing party may serve on the other Parties a Reply.

58. Matters Accorded Record Review: This Paragraph shall pertain to disputes subject to the procedures of this Section that concerns the adequacy, timing, or nature of the work to be performed under Section V of this Decree, or other matters that are accorded review on the administrative record under applicable principles of administrative law. For matters subject to this Paragraph, WASA or Citizen Plaintiffs shall have the burden of showing that the position of the United States is arbitrary and capricious or otherwise not in accordance with applicable law or this Consent Decree. EPA shall compile an administrative record, which shall consist of the Statements of Position and supporting documentation relied upon and other documents

considered and relied upon by EPA in arriving at its final administrative decision. Where appropriate, EPA in its unreviewable discretion may allow the disputing parties to make supplemental submissions. The Director of the Water Protection Division shall issue a final administrative decision resolving the dispute based on the administrative record. Stipulated penalties for the period from submission of Statements of Position until issuance of the final administrative decision shall accrue for no more than sixty (60) days, even if EPA issues the final administrative decision after more than sixty (60) days. The disputing party or parties may move for judicial review within ten (10) days of receipt of the final agency decision.

59. Other Matters: For matters that are not accorded record review under the foregoing paragraph, WASA shall have the burden to demonstrate that its actions or positions were taken in accordance with the terms, conditions, requirements and objectives of this Consent Decree and the Clean Water Act. The Director of the Water Protection Division will issue a final decision resolving the dispute which will be binding on WASA or the Citizen Plaintiffs, unless within twenty (20) days of its receipt WASA or the Citizen Plaintiffs serves on the other Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. Stipulated penalties for the period from submission of Statements of Position until issuance of the final administrative decision shall accrue for no more than sixty (60) days, even if EPA issues the final administrative decision after more than sixty (60) days.

60. If the parties to the dispute disagree as to whether the dispute should proceed

under the principles of record review or not, the parties to the dispute shall follow the procedures determined by EPA to be applicable. Upon appeal, the Court shall determine which procedures are applicable in accordance with the standards set forth in this Section.

61. Submission of any matter to the Court for resolution shall not extend or stay any of the deadlines set forth in this Consent Decree unless the Parties agree to such extension in writing or the Court grants an order extending such deadline(s). Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in this Section. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that WASA does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

XIV. RIGHT OF ENTRY

62. Commencing upon the date of lodging of this Consent Decree, EPA and its representatives, contractors, consultants, and attorneys shall have the right of entry into and upon the premises of WASA at all reasonable times, upon proper presentation of credentials, for the purposes of:

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

(b) Verifying any data or information required to be submitted pursuant to this Consent Decree;

(c) Obtaining samples and, upon request, splits of any samples taken by WASA or its consultants. Upon request, WASA will be provided with splits of all samples taken by the

United States;

(d) Inspecting and evaluating the CSO System;

(e) Inspecting and reviewing any record required to be kept under the provisions of this Consent Decree or any NPDES Permit and the Clean Water Act; and

(f) Otherwise assessing WASA's compliance with this Consent Decree.

63. This Section, Right of Entry, in no way limits or affects any right of entry and inspection, or any other right otherwise held by the United States, U.S. EPA and any other governmental entity, pursuant to applicable federal or state laws, regulations.

64. WASA reserves the right to request the laboratory analytical results of samples and/or splits of samples taken from the CSS by the United States during the term of this Consent Decree, and any non-privileged reports prepared using such results.

XV. NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS

65. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, nor shall it be interpreted to be such. This Consent Decree does not relieve WASA of any obligation to apply for, obtain and comply with the requirements of any new or existing NPDES permit or to comply with any federal, state or local laws or regulations, including, but not limited to its obligations to obtain a permit for its wastewater treatment and collection system or facilities and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with federal and state laws and regulations.

XVI. FAILURE OF COMPLIANCE

66. The United States and the Citizen Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that WASA's complete compliance with this Consent Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§1251 et seq., or with WASA's NPDES permit. Notwithstanding EPA's or the Citizen Plaintiffs'review or approval of any scope of work, report, or plans and specifications, pursuant to this Consent Decree, WASA shall remain solely responsible for any non-compliance with the terms of this Consent Decree, all applicable permits, the Clean Water Act, and regulations promulgated thereunder. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any permit shall neither affect nor postpone WASA's duties and obligations as set forth in this Consent Decree.

XVII. EFFECT OF DECREE AND NON-WAIVER PROVISIONS

67. The Parties agree that this Consent Decree resolves the civil Claims for Relief for violations of the Nine Minimum Controls contained in Counts Two of the Complaints filed by the United States and the Citizen Plaintiffs, up through the date of lodging of this Decree, except that this Decree does not resolve the claims in Counts 1 and 3 of Citizen Plaintiffs' First Amended Complaint. Count 3 of Citizen Plaintiffs' First Amended Complaint shall be dismissed without prejudice upon entry of this Decree.

68. The Parties agree that the incorporation by reference of the allegations from Count 1 into Count 2 is for informational purposes only, and does not serve to incorporate the substantive claims in Count 1 into Count 2 for purposes of determining which claims are

resolved by this Decree.

69. The United States specifically reserves the other civil claims alleged in its Complaint, including claims for violations of water quality standards. The Parties do not resolve in this Decree long-term injunctive relief or WASA's obligation to develop and implement a Long Term Control Plan. WASA hereby waives any defenses based on claims-splitting, res judicata, or similar arguments concerning the claims reserved by the United States and the Citizen Plaintiffs, and shall not rely on this partial settlement to contend such claims have been resolved.

70. This Consent Decree in no way affects or relieves WASA of any responsibility to comply with any federal, state, or local law or regulation.

71. The Parties agree that WASA is responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits.

72. The United States and the Citizen Plaintiffs reserve the right to file a civil action for statutory penalties or injunctive relief against WASA for any violations of the Clean Water Act by WASA which occur after the date of lodging of this Consent Decree and any such violations occurring prior to that date that are not specifically alleged as Claims for Relief in the portions of the Complaints resolved by this Decree.

73. This Consent Decree does not limit or affect the rights of WASA, the United States, or the Citizen Plaintiffs as against any third parties which are not parties to this Consent

Decree.

74. The Parties reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not limit any authority of EPA or the Citizen Plaintiffs under any applicable statute, including the authority to seek information from WASA or to seek access to the property of WASA, nor shall anything in this Consent Decree be construed to limit the authority of the United States or Citizen Plaintiffs to undertake any action against any person, including WASA, in response to conditions that may present an imminent and substantial endangerment to the environment or the public health or welfare.

75. Obligations of WASA under the provisions of this Consent Decree to perform duties scheduled to occur after the date of lodging, but prior to the date of entry, shall be legally enforceable from the date of lodging of this Consent Decree. Liability for stipulated penalties, if applicable, shall accrue for violation of duties scheduled to occur after the date of lodging as of the date of violation and payment of such stipulated penalties may be demanded by the United States and the Citizen Plaintiffs upon or after entry of this Consent Decree.

76. The United States reserves the right to file a criminal action for statutory penalties or other criminal relief against WASA for any violations by WASA of the Clean Water Act or other applicable federal statutes.

77. It is the intent of the parties hereto that the clauses hereof are severable, and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

78. The United States and Citizen Plaintiffs reserve all remedies available to them for

violations of Federal, State and local law.

XVIII. COSTS OF SUIT

79. EPA and WASA shall bear their own costs and attorney's fees with respect to matters related to this Consent Decree. Citizen Plaintiffs may apply to the Court for an award of costs against WASA, including reasonable attorney and expert witness fees, within 120 days of entry of this Decree. WASA retains its right to oppose any such application.

XIX. CERTIFICATION OF SUBMISSIONS

80. WASA shall maintain copies of any underlying research and data in its possession, custody or control for any and all documents, scope of work, reports, plans and specifications, or permits submitted to EPA and the Citizen Plaintiffs pursuant to this Consent Decree for a period of five (5) years, except that WASA shall not be required to maintain copies of drafts of documents, scope of work, reports, plans and specifications, reports or permits. WASA shall require any independent contractor implementing this Consent Decree to also retain such materials for a period of five (5) years. WASA shall submit such supporting documents to EPA and the Citizen Plaintiffs upon request. WASA shall also submit to EPA and the Citizen Plaintiffs upon request any other documents that relate to or discuss the operation, maintenance, repair, or construction of the CSO system (or any portion thereof), or that relate to or discuss the number, frequency, volume, quality or environmental impact of CSO discharges. In all notices, documents or reports submitted to EPA and the Citizen Plaintiffs pursuant to this Consent Decree, a senior management official of WASA shall sign and certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

XX. FORM OF NOTICE

81. Unless otherwise specified within the terms of this Consent Decree, all reports, notices, or any other written communications required to be submitted under this Consent Decree shall be sent to the respective parties at the following addresses:

As to the United States:

Department of Justice

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611, Ben Franklin Station
Washington, DC 20044
Reference DOJ Case No. 90-5-1-1-07137

United States Attorney
District of Columbia
Judiciary Center
555 Fifth Street NW
Washington, DC 20530

EPA

Chief
Office of Compliance and Enforcement (3WP20)
Water Protection Division
U.S. Environmental Protection Agency

Ariel Rios Building
12th and Pennsylvania Ave, NW
Washington, DC 20044

Chief
NPDES Branch (3WP31)
Water Protection Division
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Yvette Roundtree (3RC20)
Office of Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

As to Citizen Plaintiffs:

David Baron
Earth Justice Legal Defense Fund
1625 Massachusetts Avenue, NW
Suite 702
Washington, DC 20036-2212

As to WASA:

Jerry N. Johnson
General Manager
District of Columbia
Water and Sewer Authority
5000 Overlook Avenue, SW
Washington, D.C. 20032

XXI. ATTACHMENTS

82. The following attachments are attached hereto and incorporated into this Consent Decree:

Attachment 1 CSS Dry Weather Overflow Management Program

Attachment 2	Protocols for Wet Weather Survey for Floatables
Attachment 3	Form of 3 x 4 foot sign for CSO Outfalls under Paragraph 16(a)(ii), (iii), and (iv).
Attachment 4	Description of Supplemental Environmental Project: Low Impact Development -Retrofit
Attachment 5	Description of Citizen Plaintiff's Community Project
Attachment 6	Letter From Third-Party Organization
Attachment 7	Items to be Included in Reports

XXII. MODIFICATION

83. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation or understanding. Prior drafts of this Consent Decree shall not be used in any action involving the interpretation or enforcement of this Consent Decree.

84. At the request of WASA and with prior written notice to the Citizen Plaintiffs, EPA may grant a single extension of up to sixty (60) days for any deadline date set forth in the schedules for each of the construction projects contained in Section V, Paragraphs 10 (Maximization of Storage in the Collection System); 12 (Maximization of flow to POTW for treatment); or 13.a (Dry Weather Overflows); provided that such extension is granted prior to expiration of the deadline being extended. An extension of an interim or final deadline does not preclude extensions of other interim deadlines or the final deadline in the same schedule, but WASA must separately request each extension and subsequent deadlines will not be automatically extended on a day-for-day basis. Such extensions shall not be subject to Section

XIII (Dispute Resolution Procedures) of this Decree. EPA may also make other changes which do not materially alter the requirements of the Decree provided all Parties mutually consent to such changes. All modifications under this paragraph shall be in writing and filed with the Court, but not subject to Court approval.

85. For changes other than those identified in the foregoing Paragraph 84 of this Section, if all the Parties agree to the modification in writing, they may apply to the Court for approval thereof. If the Parties do not reach agreement on the modification, the request for the modification shall be subject to the dispute resolution procedures of this Decree. All modifications under this Paragraph 85 shall be in writing and approved by the Court before they will be deemed effective.

XXIII. PUBLIC COMMENT

86. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration by the United States of any comments. This paragraph does not create any rights exercisable by WASA, and WASA shall not withdraw its consent to this Consent Decree between lodging and entry of this Consent Decree and hereby consents to entry of this Decree without further notice.

87. All information and documents submitted by WASA to EPA pursuant to this Consent Decree shall be subject to public inspection, unless identified and supported as confidential by WASA in accordance with 40 C.F.R. Part 2.

XXIV. CONTINUING JURISDICTION OF THE COURT

88. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction, modification or execution of this Consent Decree.

XXV. TERMINATION

89. This Consent Decree shall terminate upon motion of the United States and Citizen Plaintiffs to the Court after each of the following has occurred:

(a) WASA has maintained compliance with each and every term and condition of the Decree for two (2) years from the date of Placing in Operation all construction projects contained in this Consent Decree, including Supplemental Environmental Projects;

(b) WASA has paid all penalties, stipulated penalties and any other monetary obligations due hereunder, and no penalties or other monetary obligations due hereunder are outstanding or owed to the United States or Citizen Plaintiffs; and

(c) WASA has certified completion to the United States and Citizen Plaintiffs, and neither the United States or Citizen Plaintiffs have contested WASA's completion or compliance.

90. This Consent Decree shall not terminate if, within ninety (90) days of certification by WASA to Plaintiffs of compliance pursuant to this Section, the United States or the Citizen Plaintiffs assert in writing that full compliance has not been achieved. If the United States or the Citizen Plaintiffs dispute WASA's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

91. Notwithstanding Paragraph 89 above, if WASA submits a certification to Plaintiffs that it has completed all the requirements in Paragraph 89 (a) and (b) above, and the Plaintiffs do not respond on or before ninety (90) days, WASA may file a motion to the Court seeking termination of this Consent Decree.

XXVI. SIGNATORIES

92. The Assistant Attorney General on behalf of the United States and the undersigned representatives of Defendants and the Citizen Plaintiffs certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

Entered this _____ day of _____ 2003.

_____
Chief Judge, United States District Court

FOR THE DISTRICT OF COLUMBIA
WATER AND SEWER AUTHORITY

JERRY N. JOHNSON
General Manager

HENDERSON J. BROWN IV
General Counsel
5000 Overlook Avenue, S.W.
Washington, D.C. 20032

DAVID E. EVANS
McGuire Woods LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219

FOR THE UNITED STATES OF AMERICA

Tom Sansonetti

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C.

Nancy Flickinger

NANCY FLICKINGER
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DONALD S. WELSH
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YVETTE C. ROUNDTREE
Senior Assistant Regional Counsel
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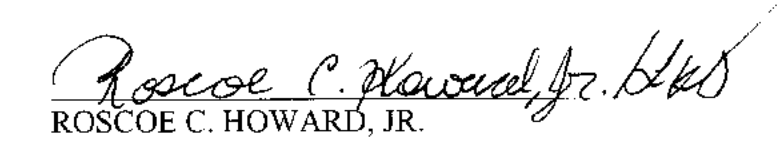
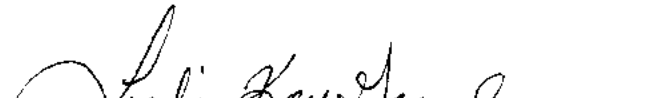
1650 Arch Street
Philadelphia, PA 19103

FOR THE UNITED STATES OF AMERICA



ROSCOE C. HOWARD, JR.
United States Attorney, D.C. Bar #246470

MARK E. NAGLE, D.C. Bar #416364
Assistant United States Attorney



LYDIA KAY GRIGGSBY, D.C. Bar #465744
Assistant United States Attorney
555 4th Street, N.W., Rm 10-808
Washington, D.C. 20530
(202) 307-0372

JOHN PETER SUAREZ
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

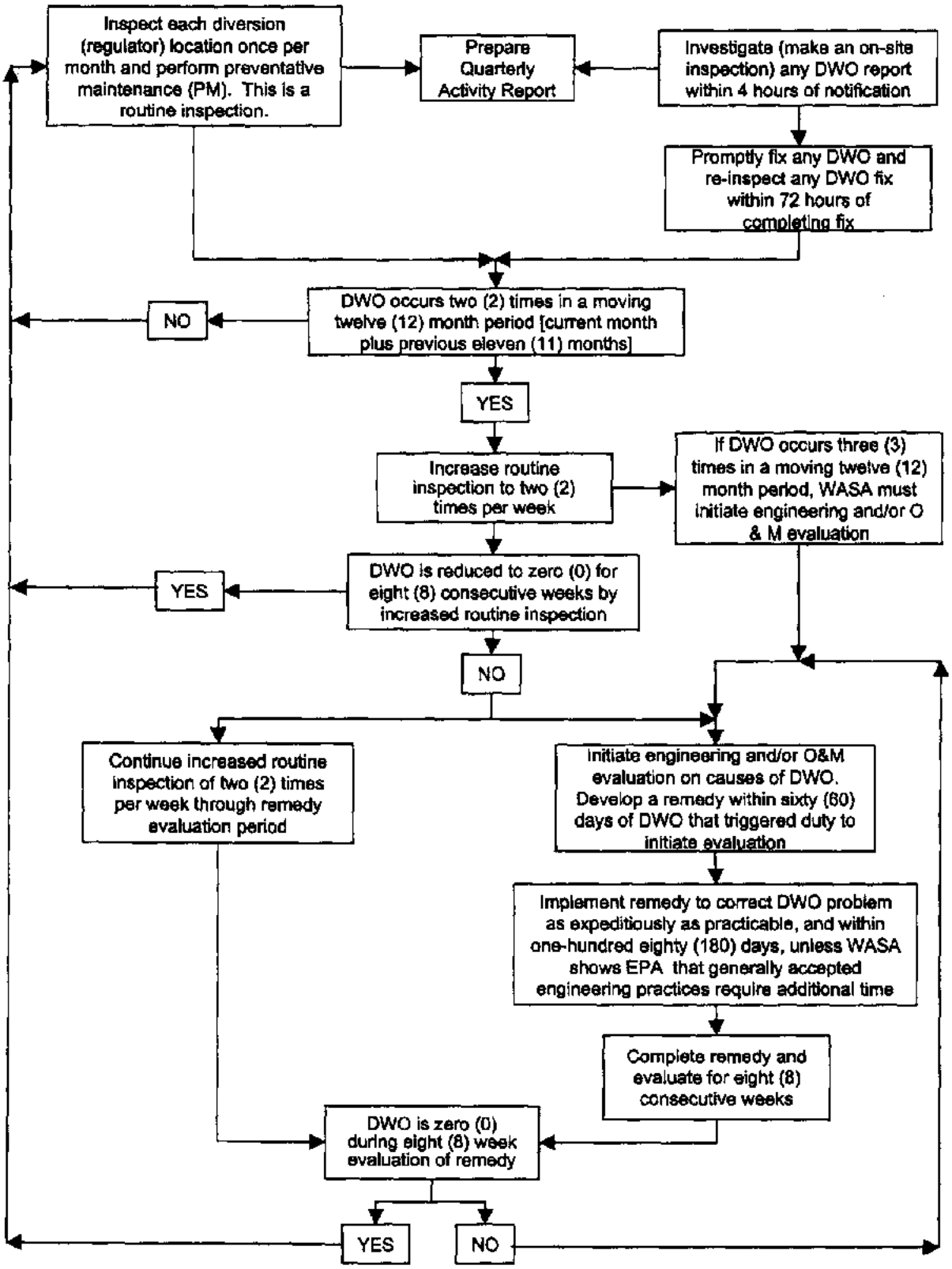
FOR ANACOSTIA WATERSHED SOCIETY,
KINGMAN PARK CIVIC ASSOCIATION,
FRIENDS OF THE EARTH, SIERRA CLUB,
AMERICAN CANOE ASSOCIATION, AND
BONNIE STUART BICK-FERGUSON

DAVID S. BARON
Earthjustice Legal Defense Fund
1625 Massachusetts Avenue, NW
Suite 702
Washington, DC 20036

ATTACHMENT 1

ATTACHMENT 1

CSS Dry Weather Overflow (DWO) Management Program Diagram



D.C. Water and Sewer Authority **Revised: Mar. 4, 2002**

ATTACHMENT 2

ATTACHMENT 2

Procedure for Visual Wet Weather Survey of Solids and Floatables
at
CSO 009 through CSO 012

March 10, 2003

1. Visual surveys will be conducted at the Main and O Street Pumping Station Outfalls CSO 009 through CSO 012 to qualitatively assess the occurrence and apparent characteristics of floatables during overflow events. Visual surveys will be performed a maximum of once per month when there are pumped overflows during normal working hours. If no overflows occur during normal working hours within a given month, then visual surveys will not be performed for that month.

2. Individual inspections for each visual survey should be recorded every 2 hours during overflow events. For example, if an initial inspection is taken at 10:15 a.m., the second will be taken at 12:15 p.m., the third will be taken at 2:15 p.m., and so on until the overflow event ends or until close of business.

3. Each visual survey will be documented on the attached form. The form may be modified as required to accommodate future needs.

4. A copy of the completed form should be forwarded to the WASA person identified as responsible for preparing the quarterly report to EPA.

5. The completed forms will be compiled and included in the quarterly report to the EPA. If no overflow events occur during normal working hours in a quarter, a statement to this effect should be added to the quarterly report.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF SEWER SERVICES
PUMPING DIVISION

FORM B-3
SOLIDS AND FLOATABLES VISUAL SURVEY FORM

Date:_____ **Inspector's Initials:**_____

CSO	Time of Observation	Overflow Observed?		Observed Overflow Rate			Quantity of Floatables[2]			Quantity of Man-Made Floatables[3]			REMARKS/OTHER
		Y	N	L[1]	M	H	L	M	H	L	M	H	
009													
010													
011													
011a													
012													

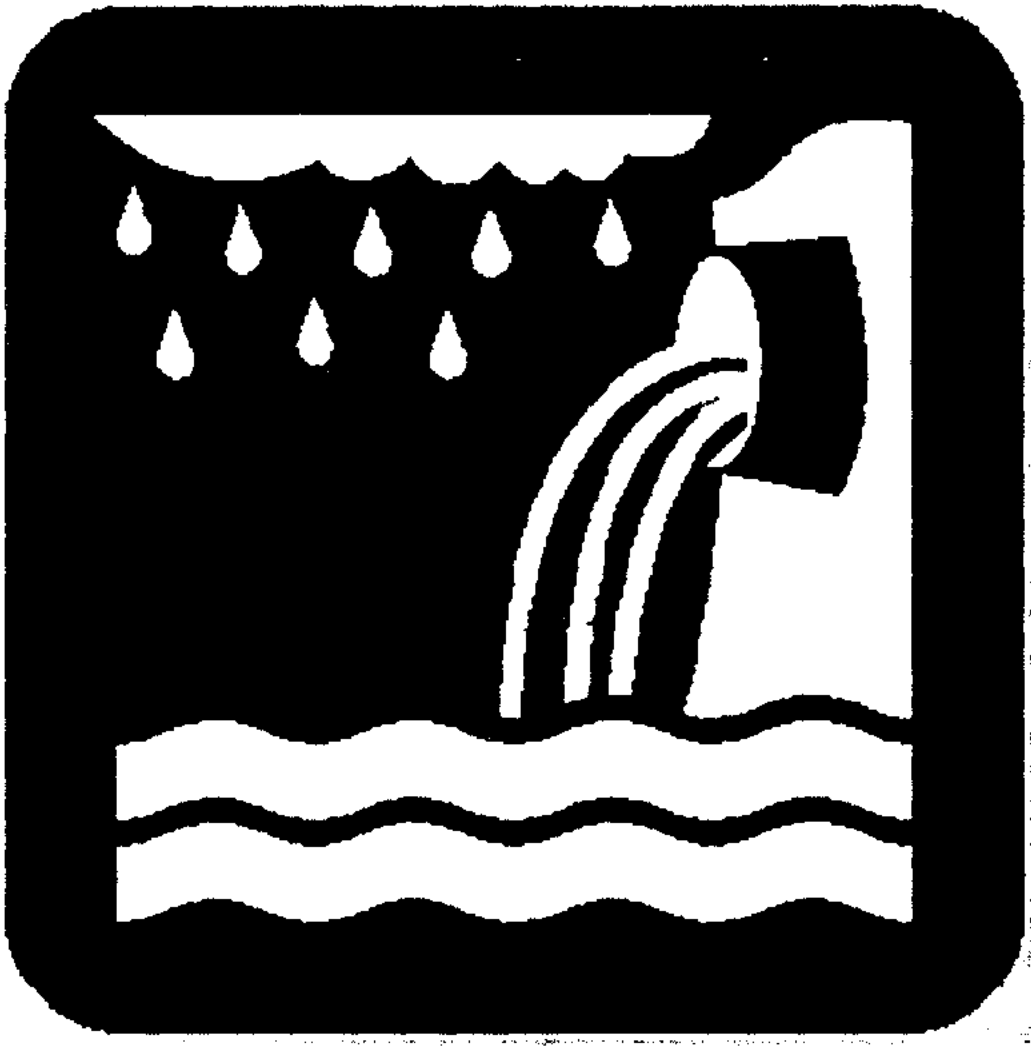
Notes:
1. L= Low, M= Moderate, H= High
2. Quantity of floatables refers to all floatables including natural materials (leaves, branches, etc), synthetic man-made materials (bottles, cans, etc) and materials in sanitary wastewater.
3. Man-made floatables are synthetic materials such as bottles, cans, paper, plastic, etc.

ATTACHMENT 3

WARNING!

Sewage

Avoid contact with river after rain.



ENVIRONMENTAL SERVICES, CITY OF PORTLAND 823-2479

ATTACHMENT 4

ATTACHMENT 4

DESCRIPTION OF SUPPLEMENTAL ENVIRONMENTAL PROJECT

WASA will implement one or more Low Impact Development or LID Retrofit projects. The goal of low impact development (LID) is to mimic predevelopment site hydrology by using site design techniques that store, infiltrate, evaporate and detain runoff. LID has the potential to reduce both the volume of storm water generated by a site and its peak overflow rate, thereby improving the quality of the storm water. Low Impact Development Retrofit (LID-R) refers to the modification of an existing site to accomplish LID goals.

Common LID-R techniques are described below:

- Bioretention (Rain Garden) - a planting bed or landscaped area used to hold runoff and to allow it to infiltrate.

- Dry Wells - an excavated pit, backfilled with granular material to allow infiltration.

- Filter Strips - a band of vegetation located between the runoff location and the receiving channel or water body. Overland flow over the filter strip allows infiltration and filtering of storm water.

- Vegetated Buffers - a strip of vegetation around sensitive areas such as water bodies that provides infiltration, slows and disperses storm water and allows some trapping of sediment.

- Level Spreader - an aggregated filled trench designed to convert concentrated flow to sheet flow to promote infiltration and reduce erosion.

- Grassed Swales - depressions designed to collect, treat, and retain runoff from a storm event. Swales can be designed to be dry or wet (with standing water) between rain events. Wet swales typically contain water tolerant vegetation and use natural processes to remove pollutants.

- Rain Barrels - a barrel placed at the end of a roof downspout to capture and hold runoff from roofs. The water in the barrel must be manually emptied onto the ground, or it can be put to beneficial use to water vegetation. The barrel top typically has a protective screen to inhibit mosquitoes.

- Cisterns - rain water from roofs is diverted into underground tanks and stored for non-potable uses.

- Infiltration Trenches - an excavated trench backfilled with stone to create a subsurface basin that provides storage of water and allows infiltration.

- Increased Tree Cover - planting trees in the City to capture a portion of rainfall.

- Permeable Pavements - reduces runoff to the combined sewer drainage system by allowing precipitation to infiltrate through the pavement and into the earth.

ATTACHMENT 5

ATTACHMENT 5

DESCRIPTION OF CITIZEN PLAINTIFFS' COMMUNITY PROJECT

Green roofs are stormwater management tools that can also improve the energy performance of buildings, air quality and the urban ecology. They consist of waterproofing material with a soil/vegetation protective cover. The green roof captures and then evapotranspires a portion of the precipitation that hits the roof. Roof runoff rates are significantly retarded because the rain must first soak through the soil and plant roots before running off the roof. Stormwater control is achieved by mimicking natural processes that intercept and delay rainfall runoff.

There are two types of green roof systems: intensive and extensive. Intensive green roofs generally require one foot or more of soil depth to create a more traditional roof garden, with large trees, shrubs and other manicured landscapes. They are multi-layer constructions with elaborate irrigation and drainage systems. Intensive green roofs add considerable load (from 80 to 150 pounds per square foot[lbs/sf]) to a structure and require intensive maintenance. These roof gardens are, however, designed to be accessible and are used as parks or building amenities.

In contrast, extensive green roofs range from as little as 1 to 5 inches in soil depth. Depending on the soil depth and type of substrate, loads can vary from 15 lbs/sf to 50 lbs/sf. Extensive green roofs are not designed for public use but can be accessed for routine maintenance walks, generally performed once per year. Extensive green roofs are primarily built for their environmental benefits.

Additional information on green roofs is provided in the following references:

City of Portland, Oregon, Stormwater Management Manual (rev'd 9/1/00) at 1-28 through 1-31.

Katrin Scholtz-Barth, Green Roofs: Stormwater Management From the Top Down, Environmental Design and Construction, January/February 2001.
http://www.thehokplanninggroup.com/lowimpact/GreenRoofsFactSheet.pdf

Linda S. Velazques, Exploring the Ecology of Organic Greenroof Architecture (Greenroofs.com).

ATTACHMENT 6

CHESAPEAKE BAY FOUNDATION

Resource Protection
Environmental Education

OFFICERS
Wayne A. Mills
Chairman

T. Gaylon Layfield, III
Vice Chairman

Burks Lapham
Secretary

Arnold I. Richman
Treasurer

William C. Baker
President

EX OFFICIO TRUSTEES
Governor Parris N. Glendening
Governor Mark Schweiker
Governor Mark R. Warner
Mayor Anthony Williams
Hal C. B. Clagett – Clagett Trustee
Joanne S. Berkley – Bay Care Chapter
Maurice P. Lynch, Ph.D. - York Chapter

TRUSTEES
Myrtha L. Allen
Donald F. Boesch
George W. Brown, Ph.D.
D. Keith Campbell
J. Carter Fox
Robert M. Freeman
Alan R. Griffith
Jack S. Griswold
Michael J. Hanley
Susan Taylor Hansen
Edward M. Holland
Virginia R. Holton
H. F. (Gerry) Lenfest
H. Turney McKnight
Philip Merrill
Donald H. Patterson, Jr.
Blaine T. Phillips
George G. Phillips
Robert M. Pinkard
Truman T. Semans
Edmund A. Stanley, Jr.
Thomas H. Stoner
Aileen Bowdoin Train
James C. Wheat, III
John R. Whitmore

HONORARY TRUSTEES
Louisa C. Duemling
T. Marshall Duer, Jr.
C. A. Porter Hopkins
M. Lee Marston
Charles McC. Mathias
Sumner Pingree
Marie W. Ridder
Godfrey A. Rockefeller
Russell C. Scott
William W. Warner
Michael Watson

December 4, 2002

Honorable Thomas F. Hogan
United States District Judge
United States District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001

RE: Anacostia Watershed Society v. District of Columbia Water and Sewer Authority, No. 1:00CV00183TFH

Dear Judge Hogan:

I am writing to confirm that the Chesapeake Bay Foundation (CBF) is willing to accept the funds described in paragraph 31 of the Consent Decree submitted to the Court in the above action.

CBF is a 501(c)(3) non-profit corporation and will not use any of these funds for lobbying purposes. CBF agrees to use these funds for the purposes described in paragraph 31 of the Consent Decree, namely, for green roof demonstration projects in the District of Columbia, within the area served by the combined sewer system in the Anacostia watershed. The funds will be used for design, construction and maintenance costs, including related administrative expenses. Although any decision concerning the use of these funds will be made solely by CBF, we will actively seek community input and involvement in the choice and design of project sites.

CBF also agrees to report annually to the Court and the parties as to how the funds have been or are proposed to be used, and to return any funds not expended five years after entry of the Decree.

Sincerely,

Mary Tod Winchester
Vice President, Administration

Philip Merrill Environmental Center
6 Herndon Avenue, Annapolis, Maryland 21403 • 410-268-8816, fax 410-268-6687

Printed on recycled paper

ATTACHMENT 7

ATTACHMENT 7

Quarterly CSS reports referred to in paragraph 16.b(i)(g) of this Decree shall include the following information:

1. Rainfall
   a. Report rainfall data for WASA-operated gages installed in the CSS and for the National Weather Service's gage at Ronald Reagan National Airport.
   b. For each gage, report total rainfall for the month and daily total rainfall for each day where rainfall exceeded trace amount.

2. CSS Control Structures - Number of inspections conducted, conditions observed (e.g. function normal, blockages, malfunctions, repairs needed) and maintenance and repairs performed. For blockages observed provide: location of blockage, date and time blockage discovered, date and time blockage corrected, and whether or not a discharge from the outfall to the receiving water was observed. If a discharge was observed, provide an estimate of discharge volume.

3. Pumping Stations.
   a. Number of inspections conducted, numbers of screens and pumps installed and numbers available for service; and preventative maintenance performed. For pumps found not to be available for service, permittee shall report the cause of unavailability and schedule and status for repairs.
   b. For the Main and O Street pumping stations, report the results of visual wet weather surveys and record of overflow screenings.
   c. Total sanitary pumpage for each pumping station in the combined sewer area and date and estimated volume of CSO pumped to the Anacostia River from Main and O Street Pumping Stations.

4. Northeast Boundary Swirl Facility.
   a. Number of inspections conducted, number of screens and swirls installed and numbers available for service; and preventative maintenance performed.
   b. For each storm, report approximate storm duration, total influent volume, total foul sewer volume, total effluent volume, approximate quantity of screenings removed, chlorine residual test results, fecal coliform test results and enterocci test results.

5. Inflatable Dams, SCADA System, Outfall Sewer Control Gates
   a. Number of inspections conducted. Number of dams installed and number of dams operational. Occurrence of an overflow and approximate duration of overflow based on dams inflation status.
   b. Position and operational status of Outfall Sewer Control Gates No. 1 and 2.

6. Major Combined Sewers, upon development of inspection program. Inspections planned, inspections conducted, results of inspections and description and schedule for maintenance and repairs planned and performed.

7. Wet Weather Overflows. Report the modeled results of the number, volume and average duration of overflows for each active CSO outfall due to wet weather events.

8. Dry Weather Overflows. Report their location, cause, date and time discovered, action taken, date and time discharge confirmed ceased and actions taken to prevent reoccurrence of the condition causing the overflow. Include an estimate of the estimated overflow volume.

9. Catch Basin Cleaning. Number and location of catch basins required to be cleaned plus number and location of catch basins actually cleaned.

10. Anacostia River Floatable Debris Removal Program. Number of boats available for service, number of cleaning trips, record of amount and nature of material removed.

11. BMP Demonstration for Solid and Floatable Control. Number of inspections conducted and conditions observed. Record of material removed at CSO outfalls 018, 040 and 041.

12. Wet Weather Flows to the Blue Plains WWTP. Upon development of a reporting system, report operations for each wet weather event.