

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

UNITED STATES OF AMERICA, )

and )

THE STATE OF INDIANA, )

Plaintiffs, )

v. )

THE CITY OF INDIANAPOLIS, )

INDIANA, A Municipal )

Corporation, )

Defendant. )

Civil Action No.

Judge

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**CONSENT DECREE**

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INDIANA, A Municipal                )  
Corporation,                         )  
  )  
  )  
  )       Defendant.  
  )  
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**CONSENT DECREE**

WHEREAS, concurrent with the lodging of this Consent Decree, Plaintiffs, the United States, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), and Indiana, on behalf of the Indiana Department of Environmental Management ("IDEM"), have filed a complaint (the "Complaint") in this civil action against Defendant, the City of Indianapolis, Indiana ("City"), in connection with the City's operation of its municipal wastewater and sewer system. The Complaint alleges that Indianapolis violated and continues to violate the Clean Water Act, 33 U.S.C. § 1251 et seq. (the "CWA" or "Act"), Title 13 of the Indiana Code, Title 327 of the Indiana Administrative Code, and Indianapolis' National Pollution Discharge Elimination System (NPDES) permits. The United States and Indiana seek civil

penalties and injunctive relief for these violations.

WHEREAS, the City denies any liability to the United States and the State arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, the City represents that it has taken the following incremental steps to comply with U.S. EPA's Combined Sewer Overflow (CSO) Control Policy:

A. Indianapolis owns and, currently through its contractor United Water (formerly the White River Environmental Partnership), operates the Belmont Advanced Wastewater Treatment Plant ("Belmont AWTP") and the Southport Advanced Wastewater Treatment Plant ("Southport AWTP"), both of which are located in Marion County and are authorized to discharge treated effluent into the White River. Indianapolis also owns and, currently through its contractor United Water, operates the Sewer System leading to the Belmont and Southport AWTPs. That System contains point sources through which pollutants are discharged into the White River, Pogues Run, Pleasant Run, Fall Creek, Little Eagle Creek, State Ditch, Bean Creek, Lick Creek, Union Creek, Blue Creek, Little Buck Creek, Big Eagle Creek and Meadow Brook.

B. Indianapolis' Sewer System serves a population of approximately 860,000, encompasses an area of approximately 277 square miles, and includes approximately 246 miles of interceptor

sewers.

C. Indianapolis' Combined Sewer System was built in the early 1900s. It was designed to carry both stormwater and sanitary waste away from residences and businesses, as was the common engineering practice at the time. The Combined Sewer System encompasses approximately 56 square miles of tributary area, and includes approximately 63 miles of interceptor sewers. Combined Sewer Overflows ("CSOs"), constructed as relief points throughout the Combined Sewer System, were designed to discharge when, among other things, stormwater caused sewer capacity to be exceeded.

D. Since 1993, Indianapolis has conducted a number of studies, modeling and characterization of its Sewer System and the waterways affected by CSOs. In 2000, Indianapolis submitted a Stream Reach Characterization and Evaluation Report and published "Improving Our Streams in the City of Indianapolis: A Report on Options for Controlling Combined Sewer Overflows." In July and August of 2000, Indianapolis hosted public education and input meetings and formed an advisory committee as a means of obtaining public participation in the development of a CSO Long-Term Control Plan ("LTCP"). Indianapolis' Wet Weather Technical Advisory Committee also was consulted during development of the LTCP. In April 2001, Indianapolis submitted a proposed LTCP to U.S. EPA and IDEM for review.

E. In May 2001, the Indianapolis City-County Council approved a 17.8 percent sewer rate increase to fund the design and construction of CSO reduction projects. In October 2005, the City-County Council approved an 87 percent sewer rate increase, phased in over three years, to fund \$400 million in sanitary capital projects for 2005-2008. Indianapolis also began the implementation of several large early action projects to reduce CSOs, and Indianapolis asserts that it has invested \$200 million since 2001 to finance these projects.

F. In response to comments from U.S. EPA, Indianapolis conducted additional stream and combined sewer outfall sampling and analysis to validate the hydraulic and water quality models of the Combined Sewer System and affected waterways. Following agreement by U.S. EPA that Indianapolis' models were suitable for use in long-term control planning, Indianapolis began a re-analysis of CSO control technologies at U.S. EPA's request. This technology analysis began in 2002 with a general screening of available technologies and continued in 2003 with a watershed-based analysis of specific technology options for Pleasant Run and Fall Creek.

G. In 2002, Indianapolis conducted a stream use survey and representatives of the City attended numerous neighborhood meetings, as well as meetings with environmental and recreational organizations, to gather information on how CSO-impacted waterways

have been and currently are used by the public. The stream use information was used by the City to assist in prioritizing a number of early action projects. These projects include: real-time control projects to maximize in-line storage and reduce overflows near three parks, a middle school and a university; a 3-million gallon storage tank along the east bank of the White River in White River State Park; and a tunneling project to reroute overflows on Pogues Run away from several Indianapolis Public Schools and into an underground tunnel.

H. The City met frequently with several advisory committees in 2003 and 2004 to review long-term control plan options and obtain feedback on policy and technical issues. In 2004, the City completed the reevaluation of available system-wide CSO control alternatives, and in October 2004, the City conducted an extensive public outreach program to obtain public feedback on the benefits and costs of these CSO control alternatives. The outreach program included production of an 8-minute educational video, five public meetings throughout the City, presentations to community organizations and elected officials, a 12-page publication that was widely distributed to residents, and an interactive Web site through which comments were accepted. News media coverage appeared in The Indianapolis Star, Indianapolis Recorder, and television and radio stations.

I. Through these outreach activities, the City received public feedback on the level of control, impact on sewer rates, environmental equity and other major issues. Indianapolis believes that the final LTCP is consistent with and directly reflects the public input received through this process.

J. Throughout the development of the LTCP, the City solicited and received input from U.S. EPA and IDEM when planning the various public outreach programs and activities, invited U.S. EPA and IDEM representatives to attend public meetings, and reported to U.S. EPA and IDEM after each public outreach program occurred. The City's public outreach efforts have satisfied the requirement for public participation set forth in U.S. EPA's CSO Policy.

K. The City has submitted to IDEM and U.S. EPA its CSO Operational Plan and CSO Public Notification Program, which set forth the City's ongoing implementation of the Nine Minimum Controls ("NMC"). For purposes of this Consent Decree, the City's CSO Operational Plan and CSO Public Notification Program shall be referred to collectively as the City's "NMC Program." In signing this Consent Decree, IDEM and U.S. EPA are approving the City's NMC Program. The City has been and currently is implementing its NMC Program to comply with the NMC, O&M and Mitigation Requirements of Indianapolis' Current Permits.



L. In 2001, to enhance the operation and maintenance of the City's Sanitary Sewer System and ensure that the City takes appropriate measures to prevent and respond to Sanitary Sewer Discharges and other releases from the Sanitary Sewer System, the City developed a Capacity, Management, Operations and Maintenance Program ("CMOM Program"). The City updated the CMOM Program in 2004, and submitted its CMOM Program to U.S. EPA and IDEM for comment. The City is implementing its CMOM Program and anticipates ongoing updates to further improve the operation and maintenance of its Sanitary Sewer System.

M. The City submitted its final Long Term Control Plan, entitled "Raw Sewage Overflow Long Term Control Plan and Water Quality Improvement Report" ("LTCP"), to IDEM and U.S. EPA on September 11, 2006. The LTCP is attached to this Consent Decree as Exhibit 6. Table 7-5 of Section 7 and Section 8 of the LTCP are attached to this Consent Decree as Exhibits 1 and 2 respectively, and are incorporated into the Consent Decree. U.S. EPA and IDEM acknowledge that, in developing the LTCP, the City has adequately followed the LTCP development process as provided in both the national CSO Policy and Indiana law. As the approving authority for NPDES permits in Indiana, IDEM intends to approve Sections 1 through 8 of the LTCP concurrent with the United States' Motion for Entry of this Consent Decree. Following the requisite comment

period (see Paragraph 102), if the United States moves for entry of the Consent Decree, its motion will constitute concurrence with IDEM's approval of Sections 1 through 8 of the LTCP.

N. Table 7-5 of Section 7 of the LTCP and Section 8 of the LTCP impose enforceable obligations under this Consent Decree, as set forth below. Although all other aspects of the LTCP were developed in consultation with IDEM and U.S. EPA, they are included for informational purposes only, are not stipulations agreed to by the Parties, and do not impose enforceable obligations under this Consent Decree.

WHEREAS, the Parties acknowledge the following regarding the City's CSO Control Measures:

O. The level of CSO control expected to be achieved following implementation of the CSO Control Measures set forth in Exhibit 1 likely will be sufficient to ensure compliance with the water quality based requirements of the Clean Water Act that will be applicable to Indianapolis following implementation of those measures. The Parties' understanding in this regard is premised, in part, upon the fact that, consistent with 33 U.S.C. § 1342(q) and U.S. EPA's "Combined Sewer Overflow (CSO) Control Policy," which was published in the Federal Register on April 19, 1994 (59 Fed. Reg. 18688), IDEM is evaluating the possibility of revising

Indiana's water quality standards, and that relevant revisions to water quality standards, if any are necessary, may be reflected in Indianapolis' future National Pollutant Discharge Elimination System ("NPDES") permits.

P. There is a process set forth in Section 303 of the Clean Water Act, 33 U.S.C. § 1313, and 40 C.F.R. Part 131 for revising water quality standards; a process set forth in Indiana Code § 13-18-3-2.3 and § 13-18-3-2.5 for establishing a CSO wet weather limited use subcategory; and a process set forth in Section 402 of the Clean Water Act, 33 U.S.C. § 1342, and Title 327 of the Indiana Administrative Code, governing NPDES permitting; and these processes include the opportunity for public participation and judicial review.

Q. The City is using the information contained in Section 9 of the LTCP to initiate the water quality standards revision process to establish a CSO wet weather limited use subcategory through a Use Attainability Analysis ("UAA") based upon the level of CSO control expected to be achieved following implementation of the CSO Control Measures set forth in Exhibit 1. IDEM will provide written notice to the City when it deems the UAA and supporting information to be complete. The Parties expect, and it is IDEM's intent, that within a period of two hundred and seventy (270) days thereafter, IDEM will either

initiate the process to revise water quality standards or issue a final agency decision that a water quality standards revision will not be undertaken. The preceding sentence is conditioned on the City timely providing IDEM with any additional information that IDEM reasonably requires to conduct or evaluate the UAA.

R. The question of what water quality based requirements will be applicable to Indianapolis following implementation of the CSO Control Measures will be determined through the water quality standards assessment and, if necessary, revision process. Those requirements ultimately will be imposed through the NPDES permitting process. Subsections VI.B and VI.D. of this Consent Decree set forth provisions that will apply depending on the timing and outcome of the water quality standards revision process.

S. The City is scheduled to start investing heavily in level of control-dependent CSO controls in the years after the date of the entry of this Consent Decree. Accordingly, all Parties intend that the UAA process described above be completed within five years from the date of the entry of this Consent Decree.

WHEREAS, the Parties agree and the Court, by entering this Consent Decree, finds, that settlement of these matters, without protracted litigation, is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without

any admission by Indianapolis of any facts beyond those that the Parties have explicitly agreed to in this Consent Decree, and with the consent of the Parties, it is hereby ORDERED:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action and over the Parties consenting thereto pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1367, and Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b). The Complaint states claims upon which relief can be granted under Section 309 of the Act, 33 U.S.C. § 1319, and Title 327 of the Indiana Administrative Code, Articles 2 and 5. Venue is proper pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a).

**II. APPLICABILITY**

2. The provisions of this Consent Decree shall apply to and be binding upon the United States and Indiana, and Indianapolis and its officers, directors, agents, employees, successors, contractors and assigns and any person having notice of this Consent Decree who is, or will be, acting on behalf of or in concert or participation with Indianapolis. Indianapolis shall provide a copy of this Consent Decree to any successor in interest at least thirty (30) days prior to transfer of that interest, and simultaneously shall verify in writing to U.S. EPA and IDEM that such notice has been given. Any sale or transfer of Indianapolis' interests in or

operating role with respect to the Belmont or Southport AWTs, or the Sewer System feeding those AWTs, shall not in any manner relieve Indianapolis of its responsibilities for meeting the terms and conditions of this Consent Decree. In any action to enforce this Consent Decree, Indianapolis shall not raise as a defense the failure by any of its officers, directors, agents, employees, successors, assigns, or contractors to take actions necessary to comply with the Consent Decree.

### III. OBJECTIVE

3. All plans, measures, reports, construction, maintenance, operational requirements and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Indianapolis to achieve and maintain full compliance with the Clean Water Act, applicable state law, and the terms and conditions of Indianapolis' Current Permits.

### IV. DEFINITIONS

4. Unless otherwise defined herein, terms used in this Consent Decree that are defined in the CWA or the regulations promulgated thereunder, or in Indianapolis' Current Permits, shall have the meaning ascribed to them by the CWA or the regulations promulgated thereunder or Indianapolis' Current Permits. Whenever the following terms are used in this Consent Decree, the following

definitions shall apply:

(a) "Achievement of Full Operation" shall mean completion of construction and installation of equipment or infrastructure such that the equipment or infrastructure has been placed in full operation, and is expected to both function and perform as designed, plus completion of shakedown and related activities, as well as completion of in-situ modified operations and maintenance manuals. This specifically includes all control systems and instrumentation necessary for normal operations and all residual handling systems. Certain specified CSO Control Measures set forth in Exhibit 1 consist of separate components. For those specified CSO Control Measures, "Achievement of Full Operation" shall not be achieved until the last component is completed.

(b) "Advanced Wastewater Treatment Plants" or "AWTPs" shall mean the Belmont and Southport advanced wastewater treatment plants identified in Indianapolis' Current Permits.

(c) "Approved Extension of Deadline" shall mean any deadline extension approved in accordance with Subsections VI.C. or VI.E. of this Consent Decree, or established through Dispute Resolution pursuant to Section XV of this Consent Decree, Dispute Resolution.

(d) "Approved Report on Revising CSO Control Measures" shall mean any Report on Revising CSO Control Measures approved in

accordance with Subsection VI.B of this Consent Decree, or established through Dispute Resolution pursuant to Section XV of this Consent Decree, Dispute Resolution.

(e) "Approved Revised CSO Control Measures Plan" shall mean any Revised CSO Control Measures Plan included in any Approved Report on Revising CSO Controls approved in accordance with Subsection VI.B of this Consent Decree, or established through Dispute Resolution pursuant to Section XV of this Consent Decree, Dispute Resolution.

(f) "Approved Supplemental Remedial Measures Plan" shall mean any Supplemental Remedial Measures Plan approved in accordance with Subsection VI.E. of this Consent Decree, or established through Dispute Resolution pursuant to Section XV of this Consent Decree, Dispute Resolution.

(g) "Approved Workplan for Revising CSO Control Measures" shall mean any Workplan for Revising CSO Control Measures approved in accordance with Subsection VI.B of this Consent Decree, or established through Dispute Resolution pursuant to Section XV of this Consent Decree, Dispute Resolution.

(h) "CMOM Program" shall mean Indianapolis' Capacity, Management, Operations and Maintenance Program" that was developed in 2001 and updated in 2004, and all updates thereto that (1) have been submitted to U.S. EPA and IDEM and (2) are consistent with



accepted industry practices to properly manage, operate and maintain sewer systems, identify and inventory areas within sewer systems with capacity constraints, implement measures to ensure adequate capacity throughout their sewer system, and respond to SSD events.

(i) "Combined Sewer Overflow" or "CSO" shall mean any discharge from any outfall identified in Attachment A to Indianapolis' Current Permits as a "Combined Sewer Overflow" or "CSO," or any discharge from any outfall that is added to the City's Current Permits as a listed combined sewer overflow within five years of the date of the discovery of the outfall.

(j) "Combined Sewer System" shall mean the portion of Indianapolis' Sewer System originally designed and constructed to collect and convey municipal sewage (domestic, commercial and industrial wastewaters) and stormwater through a single pipe-system to Indianapolis' AWTs or combined sewer overflow structures. The term "Combined Sewer System" also includes facilities constructed in accordance with Exhibit 1 or any Approved Revised CSO Control Measures Plan.

(k) "Completion of the Bidding Process" shall mean (1) Indianapolis has appropriately allocated funds for a specific CSO Control Measure (or portion thereof) or measure specified in Exhibit 3 (or portion thereof), (2) the bid for the specific CSO

Control Measure or measure specified in Exhibit 3 has been accepted and awarded by the Department of Public Works Board for the construction of the CSO Control Measure, and (3) a notice to proceed has been issued and remains in effect for the CSO Control Measure or measure specified in Exhibit 3. Indianapolis may revoke a notice to proceed for cause if Indianapolis meets the requirements specified in Section VIII and issues a new notice to proceed for the project(s) at issue by the date established in accordance with Section VIII, Revocation of Notices to Proceed, and the new notice to proceed remains in effect.

(l) "CSO Control Measures" shall mean the construction, control measures, actions and other activities set forth in Exhibit 1 or any Approved Revised CSO Control Measures Plan.

(m) "Design Criteria" shall mean the Design Criteria specified in Exhibit 1 or any Approved Revised CSO Control Measures Plan.

(n) "IDEM" means the State of Indiana Department of Environmental Management.

(o) "Indianapolis' Current Permits" or "Current Permits" means Indianapolis' NPDES Permits Nos. 0023183 and 0031950, and any such permits that succeed those permits issued to Indianapolis that are in effect at a particular time in question. A permit or any provision therein shall not be considered to be

"Current" to the extent such permit or provision is stayed in accordance with applicable state law.

(p) "Long Term Control Plan" or "LTCP" means the "Raw Sewage Overflow Long Term Control Plan and Water Quality Improvement Report" prepared by the City. A copy of the LTCP is attached to this Consent Decree as Exhibit 6.

(q) "Monthly Monitoring Report" is defined as any discharge monitoring report or monthly report of operations that Indianapolis is required to submit to IDEM on a monthly basis pursuant to Indianapolis' Current Permits or applicable state law.

(r) "NMC, O&M and Mitigation Requirements of Indianapolis' Current Permits" means the provisions in Indianapolis' Current Permits pertaining to: (1) the City's approved NMC Program, (2) the "Nine Minimum Controls" set forth in U.S. EPA's CSO Policy, (3) operation and maintenance of Indianapolis' Sewer System and AWTs, and (4) mitigation of the adverse impacts of discharges in violation of Indianapolis' Current Permits. Those provisions presently include, but are not limited to, the provisions in Parts II.A.2 and II.B. of the NPDES Permit for the Belmont AWT that was signed by the Deputy Commissioner for IDEM on October 26, 2001 (No. 0023183), Sections I.D., III and V of Attachment A to that permit, and Attachment B to that permit; and Parts II.A.2 and II.B. of the NPDES Permit for the Southport AWT that was signed by the Deputy

Commissioner for IDEM on October 26, 2001 (No. 0031950), and Sections I.E. and III of Attachment A to that permit; which provisions in turn include, but are not limited to, provisions pertaining to implementation of CSO Operational Plans and revisions thereto.

(s) "NMC Program" shall mean Indianapolis' CSO Operational Plan and CSO Public Notification Program.

(t) "Performance Criteria" shall mean the Performance Criteria specified in Exhibit 1 or any Approved Revised CSO Control Measures Plan.

(u) "Post-Construction Monitoring Program" shall mean the Post-Construction Monitoring Program set forth in Exhibit 2, as well as any additional post-construction monitoring or modeling activities included in any Approved Revised CSO Control Measures Plan or Approved Supplemental Remedial Measures Plan.

(v) "Sanitary Sewer Discharge" or "SSD" shall mean any discharge to waters of the State as defined by applicable state law, or to navigable waters of the United States as defined by Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7), from Indianapolis' Sanitary Sewer System.

(w) "Sanitary Sewer System" or "Indianapolis' Sanitary Sewer System" shall mean all portions of Indianapolis' Sewer System that are not part of Indianapolis' Combined Sewer System.

(x) "Sewer System" shall mean the wastewater collection and conveyance system owned or operated by Indianapolis that is designed to collect and convey municipal sewage (domestic, commercial or industrial) to Indianapolis' AWTs or to a combined sewer overflow structure.

(y) "Unlisted Combined Sewer Overflow" or "Unlisted CSO" shall mean any discharge to waters of the State or waters of the United States from Indianapolis' Combined Sewer System through any point source that is not a Combined Sewer Overflow.

(z) "U.S. EPA's CSO Policy" shall mean U.S. EPA's "Combined Sewer Overflow (CSO) Control Policy," which was published in the Federal Register on April 19, 1994 (59 Fed. Reg. 18688). Section 402(q) of the Clean Water Act, 33 U.S.C. § 1342(q), provides, "[e]ach permit, order, or decree issued pursuant to this chapter after December 21, 2000 for a discharge from a municipal combined storm and sanitary sewer shall conform to [U.S. EPA's CSO Policy]."

**V. NINE MINIMUM CONTROLS, OPERATION AND MAINTENANCE AND MITIGATION REQUIREMENTS**

5. Indianapolis shall comply with its approved NMC Program, its CMOM Program, and the NMC, O&M and Mitigation Requirements of Indianapolis' Current Permits. Indianapolis may update its CMOM Program, provided that any updates (1) have first been submitted to

U.S. EPA and IDEM for review and comment and (2) are consistent with accepted industry practices to properly manage, operate and maintain sewer systems, identify and inventory areas in sewer systems with capacity constraints, implement measures to ensure adequate capacity throughout a sewer system, and respond to SSD events. U.S. EPA's January 2005 "Guide For Evaluating Capacity, Management, Operation and Maintenance (CMOM) Programs at Sanitary Sewer Systems" (EPA 305-B-05-002) ("EPA's January CMOM 2005 Guide") shall be considered in determining what constitutes "accepted industry practices." To the extent Indianapolis updates its CMOM in a manner that is materially inconsistent with EPA's January CMOM 2005 Guide, Indianapolis shall identify the material inconsistency in its submission to U.S. EPA and IDEM, and explain the basis for Indianapolis' belief that the updated CMOM is nevertheless consistent with accepted industry practices, notwithstanding the material inconsistency.

**VI. IMPLEMENTATION OF CSO CONTROL MEASURES AND POST-CONSTRUCTION MONITORING**

**A. Implementation of CSO Control Measures.**

6. Indianapolis shall perform the activities and construct the CSO Control Measures in accordance with the descriptions, Design Criteria, and dates for Completion of the Bidding Process and Achievement of Full Operation for each CSO Control Measure set

forth in Exhibit 1, any Approved Revised CSO Control Measures Plan, any Approved Supplemental Remedial Measures Plan, or any Approved Extension of Deadlines.

7. Indianapolis shall perform the Post-Construction Monitoring Program set forth in Exhibit 2, any Approved Revised CSO Control Measures Plan, or any Approved Supplemental Remedial Measures Plan in accordance with the provisions and schedule set forth therein

**B. Revision of CSO Control Measures.**

8. Indianapolis shall submit to U.S. EPA and IDEM for approval, a workplan (the "Workplan for Revising CSO Control Measures" or "Workplan") for developing a Revised CSO Control Measures Plan consistent with Paragraph 10 of the Consent Decree if any of the following occurs:

(a) The State of Indiana fails to submit to U.S. EPA any new or revised water quality standards in accordance with 33 U.S.C. § 1313(c)(2)(A) resulting from Indianapolis' request as set forth in Section 9 of the LTCP, for revision to water quality standards within five years of the date of lodging of this Consent Decree; and U.S. EPA, in its discretion not subject to judicial review, provides Indianapolis with written notice directing Indianapolis to submit a Workplan;

(b) The State of Indiana submits to U.S. EPA a proposed

new or revised water quality standard in accordance with 33 U.S.C. § 1313(c)(2)(A) resulting from Indianapolis' request as set forth in Section 9 of the LTCP and:

(1) In response to the State's submission, U.S. EPA takes final action to approve, disapprove, or promulgate in accordance with 33 U.S.C. § 1313(c)(3) & (4), and U.S. EPA's final action is inconsistent with the request that Indianapolis had submitted to IDEM; and

(2) as a result of U.S. EPA's final action, the level of control to be achieved upon completion of the CSO Control Measures will likely not be sufficient to ensure compliance with the requirements specified in Paragraph 26; or

(c) Indianapolis chooses to submit a Workplan.

9. Indianapolis shall submit the Workplan required pursuant to Paragraph 8, above:

(a) within 90 days of Indianapolis' receipt of U.S. EPA's notification under Subparagraph 8(a); or

(b) with regard to Workplans required under Subparagraph 8(b): (i) within 90 days following U.S. EPA's actions under 33 U.S.C. § 1313(c)(3) & (4) if a judicial appeal has not been brought challenging U.S. EPA's action within 90 days of U.S. EPA's action; or (ii) within 90 days after a final decision no longer subject to judicial appeal has been rendered if a judicial appeal has been



brought challenging U.S. EPA's actions.

10. The purpose of the Workplan for Revising CSO Control Measures shall be for Indianapolis to develop a Revised CSO Control Measures Plan that contains measures necessary to ensure that the requirements specified in Paragraph 26 will be met. The Workplan shall contain the following:

(a) a description of how Indianapolis will utilize the information and models that Indianapolis utilized in developing the LTCP to develop a Revised CSO Control Measures Plan, and a description of the additional actions that Indianapolis will take to update that information and those models to develop the Revised CSO Control Measures Plan;

(b) a description of the actions that Indianapolis will take to provide for public participation in the development of a Revised CSO Control Measures Plan;

(c) a description of all other actions that Indianapolis must take to develop a Revised CSO Control Measures Plan in a manner consistent with any applicable provisions of U.S. EPA's CSO Control Policy;

(d) a schedule for completing development of the Revised CSO Control Measures Plan as expeditiously as possible, but in no event later than one year after U.S. EPA and IDEM approval of the Workplan for Revising CSO Control Measures; and

(e) identification of any CSO Control Measures set forth in Exhibit 1 or in any previously Approved Revised CSO Control Measures Plan, in addition to the Phase I CSO Control Measures, that are likely to be consistent with the Revised CSO Control Measures Plan.

11. Upon receipt of U.S. EPA and IDEM's approval of the Workplan for Revising CSO Control Measures, or upon resolution of any disputes pertaining to the Workplan in accordance with Section XV of this Consent Decree, Dispute Resolution, Indianapolis shall implement the Workplan in accordance with the schedule and terms set forth in the approved Workplan.

12. Within 90 days after implementation of the Workplan for Revising CSO Control Measures, Indianapolis shall submit to U.S. EPA and IDEM for approval a report (the "Report on Revising CSO Controls"), that contains the following:

(a) a Revised CSO Control Measures Plan consisting of those measures that are necessary to insure that the requirements identified in Paragraph 26 will be met. The overall level of control expected to be achieved by the Revised CSO Control Measures Plan for each watershed shall be no less stringent in terms of reducing CSO discharge occurrences and CSO discharge volumes than the overall level of control expected to be achieved for the watershed at issue by the CSO Control Measures set forth in Exhibit 1;

(b) a schedule that is as expeditious as possible for design, construction and implementation of the measures described in Subparagraph 12(a). If it is not possible for Indianapolis to design and construct all control measures simultaneously, Indianapolis shall develop a phased schedule based on appropriate sequencing of activities to allow for efficient integration of the Revised CSO Control Measures Plan into the LTCP, engineering needs of each Revised CSO Control Measure (e.g., magnitude of the project, special equipment and/or procurement needs), and upon the relative importance of each measure, with highest priority being given to those projects that provide the greatest public health or environmental benefits and then to eliminating discharges to sensitive areas to the extent such areas are addressed in the Revised CSO Control Measures Plan. The schedule shall specify milestones for each specific measure, including, at a minimum, milestone dates for (1) Completion of the Bidding Process; and (2) Achievement of Full Operation;

(c) a plan and schedule for performing any additional post-construction monitoring and modeling, in addition to that specified in the Post-Construction Monitoring Program included as Exhibit 2 or any previously Approved Revised CSO Control Measures Plan, necessary to assess whether the requirements specified in Paragraphs 21 and 26 have been or will be met upon completion of

the Revised CSO Control Measures Plan, and a plan and schedule for submitting supplemental milestone reports resulting from such additional monitoring and modeling; and

(d) information demonstrating that the provisions of the Approved Workplan for Revising CSO Control Measures have been complied with, including the provisions pertaining to public participation.

13. Except as provided in Paragraph 14 with respect to Workplans required under Subparagraphs 8(a) and 8(b), Indianapolis shall perform the activities and construct the CSO Control Measures as required by Subsection VI.A of this Consent Decree until Indianapolis' receipt of U.S. EPA and IDEM's approval of any Report on Revising CSO Control Measures, or upon resolution of any disputes pursuant to Section XV of this Consent Decree, Dispute Resolution. Upon Indianapolis' receipt of such approval or upon such resolution of any disputes, Indianapolis shall implement the Approved CSO Control Measures Plan contained in the Approved Report on Revising CSO Control Measures as required by Paragraph 15.

14. If Indianapolis was required to submit a Workplan under Subparagraphs 8(a) and 8(b) of this Consent Decree, then, upon receipt of U.S. EPA and IDEM's approval of the Workplan for Revising CSO Control Measures, or upon resolution of any disputes pursuant to Section XV of this Consent Decree, Dispute Resolution,

and until Indianapolis' receipt of U.S. EPA and IDEM's approval of any Report on Revising CSO Control Measures, or upon resolution of any disputes pursuant to Section XV of this Consent Decree (at which time Indianapolis shall be required to implement the Approved CSO Control Measures Plan contained in the Approved Report on Revising CSO Control Measures as required by Paragraph 15):

(a) Indianapolis shall only be required to implement the CSO Control Measures identified in Exhibit 1 or any previously Approved Revised CSO Control Measures Plan as being "Phase I Projects," and all additional projects identified by the Workplan as likely to be consistent with the Revised CSO Control Measures Plan; and

(b) Indianapolis shall implement the measures specified above in Subparagraph 14(a) in accordance with the descriptions, Design Criteria, and dates for Completion of the Bidding Process and Achievement of Full Operation for each such project set forth in Exhibit 1 or any previously Approved Revised CSO Control Measures Plan.

15. Upon Indianapolis' receipt of U.S. EPA and IDEM's approval of any Report on Revising CSO Control Measures, or upon resolution of any disputes pursuant to Section XV of this Consent Decree, Dispute Resolution, the Revised CSO Control Measures Plan (including any additional post-construction monitoring and

modeling) included in the Approved Report on Revising CSO Control Measures shall supercede Exhibit 1, any previously-Approved Revised CSO Control Measures Plan, or any previously-Approved Extension of Deadlines, and Indianapolis shall implement the Revised CSO Control Measures Plan (including any additional post-construction monitoring and modeling) included in the Approved Report on Revising CSO Control Measures in accordance with the schedule in the Approved Revised CSO Control Measures Plan.

**C. Extension of Deadlines Due to Increased Costs.**

16. Indianapolis currently estimates that the costs of the measures necessary to comply with Sections VI and VII of this Consent Decree will be \$1,868,000,000 (in 2005 dollars). At least every five years, Indianapolis shall report on the actual costs compared to the estimated costs for the measures completed since the last report, and Indianapolis shall reevaluate the estimated costs of the remaining measures. If one of these reports shows that the costs to Indianapolis of implementing the measures required to comply with Sections VI and VII of this Consent Decree will exceed \$2,325,000,000 (in 2005 dollars), then Indianapolis may seek an extension of the date for Completion of the Bidding Process and/or Achievement of Full Operation for one or more CSO Control Measure set forth in Exhibit 1 or any Approved Revised CSO Control Measures Plan in accordance with Paragraph 17.

17. In the event Indianapolis seeks an extension of any of the dates for Completion of the Bidding Process and/or Achievement of Full Operation, Indianapolis shall provide U.S. EPA and IDEM with a written submission that: demonstrates that costs will exceed \$2,325,000,000 (in 2005 dollars); explains why Indianapolis believes that, because of the increased costs, it is not practicable to complete the CSO Control Measures within the schedules set forth in Exhibit 1 or any Approved Revised CSO Control Measures Plan; demonstrates that the new dates are as expeditious as possible; includes all information that Indianapolis believes supports the requested modification; and includes all additional information that U.S. EPA or IDEM reasonably request to assist in evaluating Indianapolis' extension request.

18. Upon Indianapolis' receipt of U.S. EPA and IDEM's approval of the requested date extensions(s), or upon resolution of any disputes pursuant to Section XV of this Consent Decree, Dispute Resolution, Indianapolis shall implement the CSO Control Measures in accordance with the Approved Extension of Deadline.

D. Modifications to Reflect Significant Adverse Changes to Financial Circumstances, NPDES Permit Proceedings, or Inaction on Revising Water Quality Standards.

19. If: (a) Indianapolis experiences significant adverse changes to its financial circumstances; (b) proceedings concerning issuance, reissuance, or modification of an NPDES permit warrant;

(c) Indiana does not submit any new or revised water quality standards resulting from Indianapolis' request to U.S. EPA in accordance with 33 U.S.C. § 1313(c)(2) within five years of the date of lodging of this Consent Decree; or (d) Indiana submits to U.S. EPA proposed revisions to its water quality standards pertaining to Indianapolis' CSOs but U.S. EPA fails to take action in accordance with 33 U.S.C. § 1313(c)(3)&(4) on such submission within 90 days, Indianapolis may request that the United States and the State of Indiana agree to modification of this Consent Decree. If the Parties agree on a proposed modification to the Consent Decree, they shall prepare a joint motion to the Court requesting such modification in accordance with Section XXIV, Modification.

20. If the Parties do not agree that a modification proposal under Paragraph 19 is warranted, and Indianapolis believes modification of this Consent Decree is appropriate, Indianapolis reserves the right to file a motion pursuant to Federal Rule of Civil Procedure 60(b) seeking modification of the CSO Control Measures and/or compliance dates in this Consent Decree; provided, however, that the United States and Indiana reserve their rights to oppose any such motion and to argue that such modification is unwarranted. Such a motion for modification by Indianapolis shall not relieve Indianapolis of its obligations pursuant to this Section VI, unless the Court orders otherwise, and Indianapolis



shall continue with timely implementation of the CSO Control Measures until the Court rules on any motion described in this Paragraph or Paragraph 19 in a manner that modifies Indianapolis' obligations under this Decree. Nothing precludes Indianapolis from asserting that a failure by Indiana to submit new or revised water quality standards resulting from Indianapolis' request for revisions to water quality standards to U.S. EPA in accordance with 33 U.S.C. § 1313(c)(2) within five years of the date of lodging of this Consent Decree constitutes a force majeure event in accordance with Section XIV, Force Majeure.

**E. Achievement of Performance Criteria.**

21. By the specified date for Achievement of Full Operation for each specific control measure set forth in Exhibit 1, any Approved Revised CSO Control Measures Plan, or any Approved Extension of Deadline, Indianapolis shall achieve the Performance Criteria specified in Exhibit 1 or any Approved Revised CSO Control Measures Plan for the specific control measure. The procedure set forth in Subsection 8.4 of Exhibit 2 shall be used to determine whether Indianapolis has achieved the Performance Criteria.

22. If, following Achievement of Full Operation of any specific CSO Control Measure or CSO Control Measures, Indianapolis needs additional time to implement additional remedial measures necessary to achieve the Performance Criteria pertaining to the

specific CSO Control Measure or Measures, Indianapolis may submit to U.S. EPA and IDEM, for approval, (1) a request for an extension of the previously applicable deadline for Achievement of Full Operation for the CSO Control Measure or CSO Control Measures at issue to allow for implementation of additional remedial measures, and (2) a plan for performing supplemental remedial measures and additional post-construction monitoring and modeling ("Supplemental Remedial Measures Plan"). The Supplemental Remedial Measures Plan shall include a description of the remedial measures that Indianapolis will take to insure that the Performance Criteria will be achieved, and a schedule that is as expeditious as possible for design, construction and implementation of the measures; and a description of additional post-construction monitoring and modeling needed to assess whether Indianapolis has achieved the Performance Criteria, and a schedule for performing such monitoring and modeling.

23. Upon receipt of U.S. EPA and IDEM's approval of the request for extension of time and Supplemental Remedial Measures Plan, or upon resolution of any disputes in accordance with Section XV of this Consent Decree, Dispute Resolution, Indianapolis shall implement the Approved Supplemental Remedial Measures Plan (including additional monitoring and modeling) in accordance with the schedule and terms set forth therein.

F. Modification of Performance Criteria.

24. (a) Should Indianapolis determine, following Achievement of Full Operation of all specific CSO Control Measures required under Paragraph 6, and upon completion of the Post-Construction Monitoring required under Paragraph 7, that the City has not achieved the Performance Criteria in the manner set forth in Subsection 8.4 of Exhibit 2, and cannot achieve the Performance Criteria in the absence of additional remedial measures the City maintains would be cost prohibitive, infeasible or otherwise inappropriate, Indianapolis may propose to the Director of the Water Division, U.S. EPA Region 5 ("Director"), and to the Assistant Commissioner, Office of Water Quality, IDEM ("Assistant Commissioner") a modification of the Performance Criteria using the process set forth in this Paragraph. The Performance Criteria review process set forth in this Paragraph does not apply to nor does it modify the Dispute Resolution Provisions set forth in Section XV of this Consent Decree.

(b) Any proposal by the City to modify the Performance Criteria under subparagraph (a) of this Paragraph shall be in writing and shall include:

(1) a certification by the City's engineer that the City has properly designed and constructed the CSO Control Measures to achieve the Performance Criteria consistent with

accepted industry standards;

(2) the Post-Construction Monitoring Report prepared consistent with Section 8.6 of Exhibit 2 which demonstrates that the City has not achieved the Performance Criteria;

(3) a detailed description of the additional remedial measures that would be required to enable Indianapolis to achieve the Performance Criteria, including the projected cost of such remedial work;

(4) a detailed discussion of the reasons the City believes that additional remedial work would be cost prohibitive, infeasible or otherwise inappropriate; and

(5) the text of the proposed modification of the Performance Criteria;

(c) The Director and the Assistant Commissioner or their designees shall meet in person to review the City's proposal. EPA and IDEM may each retain an independent technical consultant to assist them in their evaluation of the City's proposal. The Director or the Assistant Commissioner, at their discretion, may request one or more representatives of the City to attend the meeting to provide additional information.

(d) (1) Following the meeting described in subparagraph (c) of this Paragraph, the Director and the Assistant

Commissioner shall issue a written initial determination recommending approval, disapproval, or approval subject to conditions or revisions of the City's proposal, and shall immediately transmit such determination to the Regional Administrator, the Commissioner, and the City.

(2) Indianapolis may appeal the initial determination within 30 days to the Regional Administrator and the Commissioner by submitting to those individuals any documents that the City deems relevant and appropriate. During the pendency of any such appeal, the Parties shall seek to reach agreement on any issues upon which they disagree.

(3) The Regional Administrator and the Commissioner may approve or disapprove, or approve upon conditions or in a revised form the proposed modification of the Performance Criteria. The determination of the Regional Administrator and the Commissioner shall be in their discretion and shall not be subject to judicial review.

(e) Any modification of the Performance Criteria shall be deemed a material modification of the Consent Decree under Section XXIV (Modification) and shall be subject to agreement by the United States and the State, public notice and comment pursuant to 28 C.F.R. § 50.7, and approval of the Court. The United States and the State reserve the right to withdraw or withhold their

consent to the proposed modification if public comments received disclose facts or consideration which indicate that the modified Consent Decree would be inappropriate, improper or inadequate.

25. If the Parties do not agree that a modification proposal under Paragraph 24 is warranted, or if the Parties disagree as to the terms of the proposed modification, Indianapolis reserves the right to file a motion pursuant to Federal Rule of Civil Procedure 60(b) seeking modification of this Consent Decree; provided, however, that the United States and Indiana reserve their rights to oppose any such motion and to argue that such modification is unwarranted.

**G. Compliance Following Implementation.**

26. By the specified date for Achievement of Full Operation of all CSO Control Measures set forth in Exhibit 1, any Approved Revised CSO Control Measures Plan, or any Approved Extension of Deadline, (a) Indianapolis shall have no Unlisted CSOs (either because Indianapolis has eliminated discharges from Unlisted CSOs and/or because Indianapolis has turned Unlisted CSOs into "CSOs" by having them included as Combined Sewer Overflows in Indianapolis' Current NPDES Permits); (b) Indianapolis' remaining CSOs, if any, shall comply with Indianapolis' Current Permits; and (c) Indianapolis shall have eliminated bypasses at the AWTPs or any remaining bypasses shall comply with Indianapolis' Current Permits.

Indianapolis may utilize the information contained in the LTCP, as well as any subsequently developed information, in attempting to establish compliance with Indianapolis' Current Permits.

**VII. ELIMINATION OF SSDs**

27. Indianapolis shall construct the Sanitary Sewer System Capital Improvement Projects ("SSS CIPs") consistent with the descriptions set forth in Exhibit 3 and in accordance with the dates for Completion of the Bidding Process and Achievement of Full Operation for each project set forth in Exhibit 3.

28. For each SSD location specified in Exhibit 3, Indianapolis shall not have any SSDs from that location following the date for Achievement of Full Operation specified in Exhibit 3 for that specific location.

**VIII. REVOCAION OF NOTICES TO PROCEED**

29. If Indianapolis revokes the notice to proceed for any CSO Control Measure or measures specified in Exhibit 3 then, within 14 days of the date the notice to proceed was revoked, Indianapolis shall submit to U.S. EPA and IDEM for approval a plan (the "Notice To Proceed Plan"). The Notice to Proceed Plan shall: (a) explain why the notice to proceed was revoked; (b) describe the steps that Indianapolis will take to issue a new notice to proceed; and (c) contain a schedule for issuing the new notice to proceed that includes a final date for issuance of the notice to proceed that is

as expeditious as possible.

30. Upon Indianapolis' receipt of U.S. EPA's and IDEM's approval of the Notice to Proceed Plan, or upon resolution of any disputes in accordance with Section XV of this Consent Decree, Dispute Resolution, Indianapolis shall implement the approved Notice To Proceed Plan in accordance with the schedule set forth therein, including the final date for issuance of a new notice to proceed.

**IX. U.S. EPA AND IDEM APPROVAL OF SUBMISSIONS IN ACCORDANCE WITH SECTIONS VI-VIII**

31. For all workplans, reports and other documents submitted by Indianapolis to U.S. EPA and IDEM for approval in accordance with Sections VI - VIII, above, U.S. EPA and IDEM shall, in writing, (a) approve the submission, in whole or in part; (b) approve the submission, in whole or in part, upon specified conditions; (c) disapprove the submission, in whole or in part, providing comments identifying deficiencies and directing that Indianapolis modify its submission and/or provide additional information; or (d) any combination of the above. Within 45 days following receipt of a notice of an action disapproving, partially approving, or conditionally approving a submission (or within such longer time set forth in such notice), Indianapolis shall submit a modified submission to U.S. EPA and IDEM for approval, in



accordance with U.S. EPA and IDEM's directions. Any stipulated penalties applicable to the original submission shall accrue during the 45-day or otherwise specified period but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Indianapolis' obligations under this Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

32. U.S. EPA and IDEM may take any of the actions described in Paragraph 31 with respect to any resubmitted document.

33. Indianapolis shall proceed, if directed by U.S. EPA and IDEM, to take any action required by any approved portion of Indianapolis' submission or resubmission under Paragraph 31, unless such action is directly dependent upon any unapproved portion of the submission or resubmission and Indianapolis invokes its right to dispute resolution under Section XV, Dispute Resolution. Implementation of any approved portion of a submission shall not relieve Indianapolis of any liability for stipulated penalties.

34. U.S. EPA/IDEM agree to use best efforts to expeditiously review and comment on submittals that Indianapolis is required to submit for approval pursuant to the terms and conditions of this Consent Decree. If U.S. EPA/IDEM fail to act on

the submittal within sixty (60) days or such other time period provided in this Consent Decree, any subsequent milestone date dependent upon such action by U.S. EPA/IDEM shall be extended by the number of days beyond the applicable review period that U.S. EPA/IDEM use to act on the submittal; provided that Indianapolis has notified U.S. EPA/IDEM in writing of any specific milestone dates that Indianapolis believes have been extended under this Paragraph. This Paragraph does not apply to U.S. EPA/IDEM review of, or actions taken with regard to, revisions to water quality standards, permits, or any matters other than submittals that Indianapolis is specifically required to submit for approval pursuant to the terms and conditions of this Consent Decree.

#### **X. FUNDING**

35. Indianapolis intends to seek federal and state grant funding assistance. However, compliance with the terms of this Consent Decree by Indianapolis is not conditioned on the receipt of federal or state funds. In addition, failure to comply is not excused by the lack of federal or state funds, or by the processing of any applications for the same.

#### **XI. REPORTING**

36. Beginning with the end of the next full calendar quarter after entry of this Consent Decree and for every six months thereafter until this Consent Decree terminates in accordance with

Section XXVI, Termination, Indianapolis shall submit written status reports to U.S. EPA and IDEM. The written status reports may be provided either as paper documents or in electronic or digitized format, provided that the electronic or digitized format is compatible with U.S. EPA and IDEM software and accompanied by a written certification on paper in accordance with Section XIX, Certification, and the electronic or digitized format is also sent via United States Mail in accordance with Section XII, Communications. In each report, Indianapolis shall provide the following:

(a) a statement setting forth the deadlines and other terms that Indianapolis has been required by this Consent Decree to meet since the date of the last statement, whether and to what extent Indianapolis has met these requirements, and the reasons for any noncompliance. Notification to U.S. EPA and IDEM of any anticipated delay shall not, by itself, excuse the delay;

(b) a general description of the work completed within the prior six-month period and, to the extent known, a statement as to whether the work completed in that period meets applicable Design Criteria; and a projection of work to be performed pursuant to this Consent Decree during the next six-month period;

(c) a statement as to Indianapolis' understanding regarding the status of IDEM's response to the City's request for a revision to water quality standards in accordance with Section 9

of the City's Long Term Control Plan;

(d) copies (to U.S. EPA only) of all Monthly Monitoring Reports and other reports pertaining to CSOs, SSDs and bypassing that Indianapolis submitted to IDEM in accordance with Indianapolis' Current Permits in the previous six months;

(e) (1) copies of any plan that Indianapolis has developed for its contractor United Water (or United Water's successor) with respect to operation and maintenance of the Sewer System during the prior six-month period (e.g., the "Collection System Maintenance Plan"), and any reports that United Water (or its successor) submitted to Indianapolis regarding its implementation of such plan during the prior six month period (e.g., the "Collection System Maintenance Report"), (2) a statement as to whether Indianapolis believes that United Water (or United Water's successor) has complied with any such plan, and (3) a statement as to whether United Water's (or United Water's successor) failure to comply with such plan caused any CSO, Unlisted CSO, SSD or bypass; and

(f) a description of any notices to proceed for any CSO Control Measure or measures specified in Exhibit 3 that Indianapolis has revoked in the prior six-month period, and a description of the status of Indianapolis' compliance with Section VIII with regard to issuance of a new notice to proceed.

37. If Indianapolis fails to meet any date specified for Completion of the Bidding Process or Achievement of Full Operation in Exhibit 1, any Approved Revised CSO Control Measures Plan, any Approved Extension of Deadline, or Exhibit 3, Indianapolis shall notify U.S. EPA and IDEM in writing of Indianapolis' failure within fourteen (14) days from the applicable date for Completion of the Bidding Process or Achievement of Full Operation that has not been met. The notice shall reference the specific project at issue, describe in detail the anticipated length of time that Indianapolis anticipates it will take to achieve Completion of the Bidding Process or Achievement of Full Operation for the project at issue, the precise cause or causes of the failure to meet the specified dates, the measures taken or to be taken by Indianapolis to prevent or minimize the delay, the timetable by which those measures will be implemented, and the extent (if any) to which the failure to meet the specified date at issue may impact Indianapolis' ability to meet other specified dates for Completion of the Bidding Process or Achievement of Full Operation. If Indianapolis has revoked a notice to proceed for a specific project and has not complied with Section VIII, Revocation of Notices to Proceed, Indianapolis' failure to comply with Section VIII shall be deemed to be a failure to meet a date for Completion of the Bidding Process for purposes of this Paragraph, thereby triggering the reporting obligations

specified in this Paragraph.

38. If, during the design of the facilities listed in Exhibit 1, Indianapolis decides to design a specific facility so that its size, flow rate, capacity, treatment rate, pumping rate, volume, or other applicable measure will be less than 90% of the "approximate" design number specified for that facility in the Design Criteria portion of Exhibit 1 (i.e., the design deviates from the "approximate" design number by 10% or more), Indianapolis shall notify U.S. EPA and IDEM in writing within fourteen (14) days of the date it has made that decision. The notice shall reference the specific facility at issue and the design number that Indianapolis has decided should be used in lieu of the "approximate" design number specified in the Design Criteria for that facility. The notice shall also describe the basis for Indianapolis' selection of the lower design number, including an explanation as to why use of the lower design number will ensure that the corresponding facility-specific, watershed-wide, and system-wide Performance Criteria specified in Exhibit 1 will be achieved. Indianapolis is required by this Consent Decree to ensure that all facilities are designed in accordance with good engineering practices to ensure that corresponding facility-specific, watershed-wide, and system-wide Performance Criteria will be achieved. Plaintiffs reserve their rights to argue that

Indianapolis has not complied with this requirement, notwithstanding any notice that Indianapolis provides in accordance with this Paragraph.

## XII. COMMUNICATIONS

39. Except as specified otherwise, when written notification (including all reports) or communication with the United States, the State of Indiana, IDEM, or Indianapolis is required by the terms of this Consent Decree, it shall be addressed as follows:

### As to the United States Department of Justice:

By U.S. Mail:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044-7611  
Reference Case No. 90-5-1-1-07292

By Courier:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
ENRD Mail Room, Room 2121  
601 D. Street, NW  
Washington, D.C. 20004  
Reference Case No. 90-5-1-1-07292

### As to U.S. EPA:

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

As to the State:

Office of the Attorney General

Steve Griffin  
Deputy Attorney General  
Office of the Attorney General  
100 North Senate Avenue  
MC60-01IGCN1307  
Indianapolis, Indiana 46204-2251

Indiana Department of Environmental Management

Chief, Compliance Branch  
Office of Water Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
P.O. Box 6015  
Indianapolis, Indiana 46206

and

Chief, Enforcement Section  
Office of Legal Counsel  
Indiana Department of Environmental Management  
100 North Senate Street  
P.O. Box 6015  
Indianapolis, Indiana 46206

As to Indianapolis:

Director  
Department of Public Works  
2460 City County Building  
200 East Washington Street  
Indianapolis, Indiana 46204

and

Corporation Counsel  
Office of Corporation Counsel  
1600 City County Building  
200 East Washington Street  
Indianapolis, Indiana 46204



All notifications or communications shall be deemed submitted on the date they are postmarked and sent by first class mail or certified mail, return receipt requested.

**XIII. STIPULATED PENALTIES**

40. Indianapolis shall pay stipulated penalties in the amounts set forth in this Section upon demand by the United States or the State of Indiana if Indianapolis should fail to comply with the requirements of this Consent Decree specified below, unless excused under Section XIV, Force Majeure, and subject to Indianapolis' right to invoke dispute resolution under Section XV, Dispute Resolution. "Compliance" by Indianapolis means satisfaction of all requirements of this Consent Decree, including, but not limited to, completion of the activities required under this Consent Decree or any work plan or other plan attached to or approved pursuant to this Consent Decree within the specified time schedules and deadlines established by this Consent Decree or any work plan or other plan attached to or approved pursuant to this Consent Decree.

41. For each failure to timely submit an adequate Post-Construction Monitoring Report (required pursuant to Paragraph 7 and Exhibit 2), Workplan for Revising CSO Control Measures (required pursuant to Subsection VI.B), or Report on Revising CSO Controls (required pursuant to Subsection VI.B), Indianapolis shall

pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$500/day
31st day to 60th day	\$1,000/day
Each day beyond 60 days	\$2,000/day

Stipulated penalties under this Paragraph for failure to timely submit a submission shall begin to accrue on the day following the date that the submission was due. Subject to Paragraph 31, stipulated penalties under this Paragraph for failure to submit an adequate submission shall begin to accrue on the date that Indianapolis receives written notice from U.S. EPA or IDEM that the submission or resubmission is not adequate, in whole or in part, and shall continue to accrue until Indianapolis submits a revised document to U.S. EPA and IDEM which U.S. EPA and IDEM ultimately approve.

42. For each failure to submit timely and adequate reports or other documents required by this Consent Decree, but not included in Paragraph 41, Indianapolis shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$500/day
31st day to 60th day	\$1,000/day
Each day beyond 60 days	\$1,500/day

Stipulated penalties under this Paragraph for failure to timely

submit a submission shall begin to accrue on the day following the date that the submission was due. Subject to Paragraph 31, stipulated penalties under this Paragraph for submitting an inadequate plan or other document shall begin to accrue on the date that Indianapolis receives written notice from U.S. EPA or IDEM that the submission or resubmission is not adequate, in whole or in part, and shall continue to accrue until Indianapolis submits a document to U.S. EPA and IDEM which U.S. EPA and IDEM ultimately approve.

43. For each failure to adequately implement the measures specified and/or meet the dates for Completion of Bidding Process and Achievement of Full Operation included in Exhibit 1 (as required by Subsection VI.A), any Approved Workplan for Revising CSO Control Measures (required by Subsection VI.B), any Approved Revised CSO Control Measures Plan (as required by Subsections VI.A and VI.B), any Approved Extension of Deadline (as required by Subsections VI.A., VI.C. and VI.E.), any Approved Supplemental Remedial Measures Plan (as required by Subsection VI.E.), or Exhibit 3 (as required by Section VII), Indianapolis shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$1,000/day
31st day to 60th day	\$2,000/day

Each day beyond 60 days            \$5,000/day

Indianapolis shall be deemed to have not met a date for Completion of the Bidding Process, and therefore shall be liable for stipulated penalties under this Paragraph, if Indianapolis revokes a notice to proceed for a specific project and does not comply with Section VIII, Revocation of Notices to Proceed, or issue a new notice to proceed in accordance with Section VIII, in which case stipulated penalties shall begin to accrue starting on the date that the prior notice to proceed was revoked, and shall continue to accrue until the date a new notice to proceed has been issued.

44. For each day that Indianapolis fails to comply with the its approved NMC Program, its CMOM Program, or the NMC, O&M and Mitigation Requirements of Indianapolis' Current Permits (as required by Section V, Nine Minimum Controls, Operation and Maintenance and Mitigation Requirements), Indianapolis shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$1,500/day
31st day to 60th day	\$2,000/day
Each day beyond 60 days	\$5,000/day

45. For each day that a CSO, Unlisted CSO or bypass occurs that was caused by Indianapolis' failure to comply with Indianapolis' approved NMC Program, its CMOM Program, or the NMC,

O&M and Mitigation Requirements of Indianapolis' Current Permits Exhibit 1, Indianapolis shall pay stipulated penalties of \$1,000 per day for each day of each CSO, Unlisted CSO or bypass. These stipulated penalties shall be in addition to any stipulated penalties that are applicable under Paragraph 44 of this Consent Decree.

46. For each day that an SSD occurs from any of the SSD locations specified in Exhibit 3 prior to the date for Achievement of Full Operation for the SSD location that was caused by Indianapolis' failure to comply with Indianapolis' approved NMC Program, its CMOM Program, or the NMC, O&M and Mitigation Requirements of Indianapolis' Current Permits, Indianapolis shall pay stipulated penalties in the amounts set forth below per day for each day of each SSD. These stipulated penalties shall be in addition to any stipulated penalties that are applicable under Paragraph 44 of this Consent Decree:

<u>Volume of SSD</u>	<u>Penalty Per SSD</u>
500 gallons or less	\$500
More than 500 gallons	\$1,000

47. For each day that an SSD occurs from any of the SSD locations specified in Exhibit 3 on or after the date for Achievement of Full Operation for the SSD location specified in Exhibit 3, and from any other location on or after the date of

entry of this Consent Decree, and for each day that an Unlisted CSO occurs from any location on or after the date of entry of this Consent Decree, Indianapolis shall pay stipulated penalties in the amounts set forth below per day per location for each day of each SSD or Unlisted CSO:

<u>Volume of SSD</u>	<u>Penalty Per SSD</u>
500 gallons or less	\$500
501 to 10,000 gallons	\$1,000
More than 10,000 gallons	\$3,000

48. Indianapolis shall be subject to the following stipulated penalties for failure to meet the milestones set forth in the SEP Plan (Exhibit 5), revisions to the SEP Plan, or in submittals subsequently approved by U.S. EPA and IDEM pursuant to the provisions of this Consent Decree, or failure to timely submit the SEP Completion Report, required by Paragraph 80:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$1,000
31st day to 60th day	\$1,500
Each day beyond 60 days	\$2,250

In addition, if the total amount expended on implementing the SEPs is less than \$2,000,000, Indianapolis shall be subject to a stipulated penalty equal to the difference between the amount spent and \$2,000,000. Penalties under this paragraph shall be paid, upon demand, 50% to the United States and 50% to the State of Indiana, in accordance with the provisions of Paragraph 53.

49. For each failure to comply with any other requirement of this Consent Decree not specified in Paragraphs 41-48 above, Indianapolis shall pay the following stipulated penalties:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$500
31st day to 60th day	\$1,000
Each day beyond 60 days	\$2,000

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

51. Except as described in Paragraphs 41-42, above, all penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue until complete performance occurs.

52. Following U.S. EPA or IDEM's determination that Indianapolis has failed to comply with a requirement of this Consent Decree, U.S. EPA or IDEM may give Indianapolis written notification of the same and describe the noncompliance. U.S. EPA or IDEM may send Indianapolis a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA or IDEM has notified Indianapolis of a violation.

53. Any stipulated penalties incurred by Indianapolis shall be paid within thirty (30) days of the date of any written demand for same by U.S. EPA or IDEM, subject to Indianapolis' right to invoke dispute resolution in accordance with Section XV, Dispute Resolution, as follows: Fifty percent (50%) of the penalty shall be paid to the United States by submitting a cashier's or certified check payable to "Treasurer of the United States," and shall be tendered to U.S. EPA Region V, Post Office Box 70753, Chicago, Illinois 60637. The transmittal letter accompanying the check shall specify the caption and docket number of this action, DOJ Reference Number 90-5-1-1-07292, and a description of the basis for the penalties. A copy of the letter and the check shall simultaneously be sent to U.S. EPA Region V, Water Compliance Branch, Compliance Section, WC-15J, 77 West Jackson Boulevard, Chicago, Illinois 60604, and to Chief, Environmental Enforcement Section, United States Department of Justice, Post Office Box 7611, Washington, D.C. 20044-7611. Fifty percent (50%) of the penalty shall be paid to the State of Indiana by check in the amount due, payable to the "Indiana Department of Environmental Management Special Fund" and delivered to:

Cashier  
Indiana Department of Environmental Management  
P.O. Box 7060  
Indianapolis, IN 46207-7060



A copy of the check and transmittal letter or other evidence of payment (which should reference the caption number and docket number) shall be sent to IDEM at the addresses set forth in Paragraph 39, above.

54. The stipulated penalties herein shall be in addition to other remedies or sanctions available to the United States and the State of Indiana by reason of Indianapolis' failure to comply with the requirements of this Consent Decree, applicable state law, or the Clean Water Act. The payment of such stipulated penalties shall not be construed so as to relieve Indianapolis from specific compliance with this Consent Decree or federal or state law, or to limit the authority of U.S. EPA or IDEM to require compliance with such laws. The United States and State of Indiana are specifically authorized to seek injunctive relief in this Civil Action to address any violation of this Consent Decree. Where an act or omission that constitutes a violation of this Consent Decree also constitutes a violation of a statute or regulation, the United States, U.S. EPA or Indiana may elect, in their sole discretion, to seek civil penalties under the statute or regulation. However, in an action for civil penalties based upon a violation of a statute, the Parties stipulate that evidence that Indianapolis has paid a stipulated penalty to the United States, U.S. EPA, and/or the State of Indiana for the same violation for the same day in

issue is admissible and shall be considered as a factor in mitigation of a penalty.

55. If Indianapolis invokes dispute resolution as provided in Section XV, below, penalties shall continue to accrue as provided in Paragraphs 41, 42 and 51 during such dispute resolution period, but need not be paid until the following:

(a) If the dispute is resolved by agreement or by a decision of U.S. EPA or IDEM that is not appealed to this Court, accrued penalties determined to be owing shall be paid to the United States and the State of Indiana within 60 days of the agreement or the receipt of U.S. EPA and IDEM's decision or order;

(b) If the dispute is appealed to this Court and the United States and Indiana prevail in whole or in part, Indianapolis shall pay all accrued penalties determined by the Court to be owed to the United States and Indiana within 60 days of receipt of the Court's decision or order, except as provided in Paragraph 55(c) below;

(c) If the District Court's decision is appealed by any Party, Indianapolis shall pay all accrued penalties determined by the District Court to be owing to the United States and Indiana into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days.

Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the United States, Indiana or Indianapolis to the extent that such party(ies) prevail(s).

56. If Indianapolis fails to pay stipulated penalties when due, the United States or Indiana may institute proceedings in this action to collect the penalties, as well as interest.

57. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State of Indiana to seek any other remedies or sanctions available by virtue of Indianapolis' violation of this Consent Decree or of Indianapolis' Current Permits or of the Clean Water Act or of applicable state law.

#### **XIV. FORCE MAJEURE**

58. If any event occurs that causes or may cause Indianapolis to violate any provision or requirement of this Consent Decree, Indianapolis shall notify U.S. EPA and IDEM in writing within fourteen (14) days from the date Indianapolis first knew, or in the exercise of reasonable diligence should have known, that compliance with the Consent Decree would be prevented or delayed. The notice shall reference this Section of the Consent Decree and shall describe in detail the anticipated length of time the violation may persist, the precise cause or causes of the

violation, the measures taken or to be taken by Indianapolis to prevent or minimize the violation and the timetable by which those measures will be implemented. Indianapolis shall adopt all reasonable measures to avoid or minimize any such violation. Indianapolis shall make all reasonable efforts to identify events that cause or may cause a violation of this Consent Decree. Failure by Indianapolis to comply with the notice requirements of this Paragraph shall constitute a waiver of Indianapolis' rights to obtain an extension of time or other relief under this Section based on such incident.

59. If U.S. EPA and IDEM agree that the violation has been or will be caused by circumstances beyond the control of Indianapolis or any entity controlled by it, including its consultants and contractors, and that Indianapolis could not have prevented such violation, the time for performance of the requirement in question shall be extended for a period not to exceed the actual delay resulting from such circumstance, and stipulated penalties shall not be due for such delay or non-compliance. In the event U.S. EPA or IDEM do not agree that the violation was caused by circumstances beyond the control of Indianapolis and notifies Indianapolis of such determination, Indianapolis may invoke the dispute resolution provisions in Section XV of this Consent Decree, Dispute Resolution.

60. If Indianapolis invokes dispute resolution and U.S. EPA and IDEM or the Court determines that the violation was caused by circumstances beyond the control of Indianapolis or any entity controlled by it, and that Indianapolis could not have prevented such violation, Indianapolis shall be excused as to that violation, but only for the period of time the violation continues due to such circumstances.

61. Indianapolis shall bear the burden of proving that any delay or violation has been or will be caused by circumstances beyond its control, and that Indianapolis could not have prevented such violation, as set forth above. Indianapolis shall also bear the burden of establishing the duration and extent of any delay or violation attributable to such circumstances, that such duration or extent is or was warranted under the circumstances and that, as a result of the delay, a particular extension period is appropriate. An extension of one compliance date based on a particular circumstance beyond Indianapolis' control shall not automatically extend any subsequent compliance date or dates.

62. Changed financial circumstances or unanticipated or increased costs or expenses associated with implementation of this Consent Decree shall not serve as a basis for excusing violations of or granting extensions of time under this Consent Decree, except as expressly provided in Subsections VI.C. and VI.D. of this

Consent Decree.

63. Failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree shall not, in any event, serve as a basis for excusing violations of or granting extensions of time under this Consent Decree. However, a permitting authority's failure to act in a timely manner on an approveable permit application may serve as a basis for an extension under the force majeure provisions of this Consent Decree.

64. Indianapolis shall make a showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. Indianapolis may petition for the extension of more than one compliance date in a single request.

#### **XV. DISPUTE RESOLUTION**

65. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree, to the extent that Paragraph 66, below, provides for resolution of disputes by the Court. IDEM and/or U.S. EPA actions with regard to issuance, modification or review of NPDES permits or water quality standards pursuant to 33 U.S.C.

§ 1313(c), 33 U.S.C. § 1342, and state law are not subject to dispute resolution under this Consent Decree.

66. Any dispute that arises with respect to the meaning, application, implementation, interpretation, amendment or modification of this Consent Decree, or with respect to Indianapolis' compliance herewith (including the adequacy of Indianapolis' performance of the control measures and adequacy of the submittals required by this Consent Decree) or any delay hereunder, the resolution of which is not otherwise expressly provided for in this Consent Decree, shall in the first instance be the subject of informal negotiations. If any Party believes it has a dispute with any other Party, it shall notify all the other Parties in writing, including notice to the U.S. Department of Justice and the Indiana Attorney General, setting forth the matter(s) in dispute, and the Parties will proceed initially to resolve the matter in dispute by informal means. Such period of informal negotiations shall not exceed thirty (30) days from the date the notice was sent, unless the Parties agree otherwise.

67. If the informal negotiations are unsuccessful, the position of the Plaintiffs shall control unless, within twenty (20) days after the conclusion of the informal negotiation period, Indianapolis invokes the formal dispute resolution procedures of this Section by serving on the United States and the State a

written statement of position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation. For purposes of this Section XV, Dispute Resolution, "Plaintiffs" shall mean both the United States and the State, unless the dispute is only with one plaintiff, in which case "Plaintiffs" shall mean only the plaintiff with whom there is a dispute.

68. Within thirty (30) days of receiving Indianapolis' statement of position under Paragraph 67, the Plaintiffs will serve on Indianapolis their written statement of position, including any supporting factual data, analysis, opinion, or documentation.

69. An administrative record of the dispute shall be maintained by U.S. EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to Paragraphs 67-68.

70. The Plaintiffs' statement of position shall be binding upon Indianapolis unless Indianapolis files a petition with the Court describing the nature of the dispute and a proposal for its resolution. Indianapolis' petition must be filed no more than twenty (20) days after receipt of the Plaintiffs' statement of position. The Plaintiffs shall then have 30 days to file a response setting forth their position and proposal for resolution.

71. In any such dispute, the petitioner shall have the burden of proof, and the standard of review shall be that provided by



applicable law.

72. Submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Consent Decree, unless the Parties agree to such extension in writing or the Court allows the extension upon motion.

73. Stipulated penalties with respect to any disputed matter (and interest thereon) shall accrue in accordance with Paragraphs 41, 42 and 51; however, payment of stipulated penalties, and any accrued interest, shall be stayed pending resolution of the dispute, as follows:

(a) If the dispute is resolved by informal agreement before appeal to this Court, accrued penalties (and interest), if any, determined to be owing shall be paid within 60 days of the agreement or the receipt of the Plaintiffs' final position in writing.

(b) If the dispute is appealed to this Court and the Plaintiffs prevail in whole or in part, Indianapolis shall pay all accrued penalties (and interest) determined to be owed within 60 days of the Court's decision or order.

(c) In the event of an appeal, Indianapolis shall pay all accrued penalties (and interest) determined to be owed within 60 days after a final decision no longer subject to judicial review has been rendered.

**XVI. CIVIL PENALTY**

74. Within 30 days after the date of entry of this Consent Decree, Indianapolis shall pay the sum of \$588,900 to the United States and \$588,900 to the State of Indiana, as a civil penalty. The civil penalty shall be paid in accordance with Paragraph 75, below.

75. The civil penalty shall be paid as follows:

(a) Payment to the United States shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Indianapolis following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Indiana. At the time of payment, Indianapolis shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference the civil action number and DOJ number 90-5-1-1-07292) to the United States in accordance with Paragraph 53, above.

(b) Payment to Indiana shall be made by check in the amount due, payable to the "Indiana Department of Environmental Management Special Fund" and delivered to:

Cashier  
Indiana Department of Environmental Management  
P.O. Box 7060  
Indianapolis, IN 46207-7060

A copy of the check and transmittal letter or other evidence of payment (which should reference the caption number and docket number) shall be sent to Indiana and IDEM at the addresses set forth in Paragraph 39, above.

In lieu of payment of \$530,010 of the \$588,900 civil penalty to Indiana, Indianapolis may instead (i) pay the sum of \$58,890 to the State of Indiana as a civil penalty in accordance with this Paragraph 75 within 30 days after the date of entry of this Consent Decree and (ii) perform a State Supplemental Environmental Project ("State SEP") in accordance with Exhibit 4, consisting of Septic System Abatement. An offset ratio of 2:1 will be applied to this State SEP, i.e. Indianapolis must expend two dollars in order to offset one dollar of the civil penalty. Therefore, Indianapolis must expend a minimum of \$1,060,020 in order to offset 90% of a civil penalty totaling \$588,900. Indianapolis estimates the total cost of the State SEP to be at least \$1,510,000.

Indianapolis shall complete the State SEP by December 31, 2010. In performing the State SEP, Indianapolis shall comply with all applicable federal, state, and local laws and regulations, and shall obtain and comply with any necessary licenses or permits. Within 30 days of completion of the State SEP, Indianapolis shall submit to IDEM an itemized list, along with supporting documentation, of costs incurred in performing the State SEP. In

the event that the State SEP cost is less than \$1,060,020, Indianapolis shall pay the balance of the civil penalty that is not offset by the State SEP, to be calculated utilizing the 2:1 offset ratio described above, plus interest at the rate established by IC 24-4.6-1-101. Interest on the balance of the civil penalty shall be paid from the Effective Date of this Consent Decree. Payment shall be made to the Environmental Management Special Fund, within 15 days of receipt of notice from IDEM that payment is due.

In the event that Indianapolis fails to complete the State SEP by December 31, 2010, Indianapolis shall pay the entire balance of the civil penalty, totaling \$588,900, plus interest at the rate established by IC 24-4.6-1-101. Interest on the balance of the civil penalty shall be paid from the entry date of this Consent Decree. Payment shall be made to the Environmental Management Special Fund, within 15 days of receipt of notice from IDEM that payment is due.

76. In the event of late payment of the civil penalty required to be paid under this Section, Indianapolis shall pay the civil penalty, together with interest accruing from the 31<sup>st</sup> day after the date of entry of this Consent Decree, at the rate specified in 28 U.S.C. § 1961. In addition, Indianapolis shall pay a stipulated penalty of \$200.00 per day for each day that the payment is late. Stipulated penalties shall, as directed by the

United States, be paid by EFT, or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No.90-5-1-1-07292 and the civil action number and delivered to the office of the United States Attorney, Southern District of Indiana. All transmittal correspondence shall state that any such payment tendered is for late payment of the civil penalty or for stipulated penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 75(a), above. The United States shall be entitled to collect the costs (including attorneys fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties for late payment of the civil penalty.

**XVII. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

77. Indianapolis shall complete a Supplemental Environmental Project ("SEP"), in accordance with the Supplemental Environmental Projects Plan ("SEP Plan") attached to this Consent Decree as Exhibit 5, which the Parties agree is intended to secure significant environmental protection and improvements that are not otherwise required by law.

78. Indianapolis shall complete the SEP pursuant to the plans and the time schedules set forth in the SEP Plan.

79. Indianapolis shall spend at least \$2,000,000 implementing the SEP identified in the SEP Plan. No part of this expen-

diture shall include federal or state funds, including federal or state low interest loans, contracts, or grants. Indianapolis shall include documentation of expenditures made in connection with the SEPs as part of the SEP Completion Report required by Paragraph 80, below.

80. Indianapolis shall submit to U.S. EPA and IDEM a SEP Completion Report for the SEP described in the SEP Plan no later than 120 days from the date for completion of the SEP set forth in the SEP Plan. The Report shall contain the following information for the SEPs:

- (a) a detailed description of the SEP as implemented;
- (b) a description of any operating problems encountered and the solutions thereto;
- (c) itemized costs;
- (d) certification that the SEP has been fully implemented in accordance with the SEP Plan and the provisions of this Consent Decree; and
- (e) a description of the environmental and public health benefits resulting from implementation of the SEP.

81. Indianapolis hereby certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Indianapolis required to perform or develop the SEP by agreement, grant or injunctive relief in this or any other

case or in compliance with state or local requirements. Indianapolis further certifies that it has not received, and is not presently negotiating to receive, credit for the SEP in any other enforcement action or proceeding involving the U.S. EPA or IDEM.

#### XVIII. RIGHT OF ENTRY

82. U.S. EPA and IDEM, and their representatives, contractors, consultants, and attorneys shall have the right of entry into and upon Indianapolis' AWTPs and Sewer System, at all reasonable times, upon proper presentation of credentials, for the purposes of:

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

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

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

(d) Otherwise assessing Indianapolis' compliance with this Consent Decree, Indianapolis' Current Permits, the Clean Water Act or applicable state law.

83. This Section XVIII, Right of Entry, in no way limits or affects any right of entry and inspection held by the United

States, U.S. EPA, Indiana, and IDEM pursuant to applicable federal or state laws, regulations, or permits.

**XIX. CERTIFICATION**

84. Any report, plan, or other submission that Indianapolis is required by this Consent Decree to submit, including reports, plans or other submissions that Indianapolis is also required to submit by its Current Permits, shall be signed by an official or authorized agent of Indianapolis and shall include the following certification:

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

85. Indianapolis shall not object to the admissibility into evidence of any report, plan, or other submission prepared in accordance with this Paragraph or the information contained in said reports in any proceeding initiated by any of the Parties to this Consent Decree to enforce this Consent Decree. Notwithstanding the



above, Indianapolis may seek in accordance with applicable law to submit any contradictory or other evidence as to any matter affected by the evidence referred to in the preceding section in any proceeding to enforce this Consent Decree.

**XX. NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS**

86. This Consent Decree is not and shall not be construed as a permit, or a modification of any existing permit, issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, or state law, nor shall it in any way relieve Indianapolis of its obligations to obtain permits for its wastewater treatment facilities, sewer system, or modifications thereto, and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation, including the obligation to obtain facility construction permits pursuant to Title 327 of the Indiana Administrative Code, Article 3. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

87. Nothing herein, including the incorporation of the CSO Control Measures specified in Exhibit 1 into this Consent Decree, or the United States' and the State's review or approval of any plans, reports, policies or procedures formulated pursuant to this Consent Decree (including any Revised CSO Control Measures Plan),

shall be construed as relieving Indianapolis of the duty to comply with the Clean Water Act, the regulations promulgated thereunder, and all applicable permits issued thereunder, or as relieving Indianapolis of its duty to comply with applicable state law.

**XXI. EFFECT OF COMPLIANCE**

88. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Indianapolis' 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., applicable state law, or Indianapolis' NPDES permits.

**XXII. EFFECT OF CONSENT DECREE AND NON-WAIVER PROVISIONS**

89. Nothing contained in this Consent Decree shall be construed to prevent or limit the United States' or the State's rights to obtain penalties or further or additional injunctive relief under the Clean Water Act or other federal statutes or regulations, including, but not limited to, criminal punishment under Section 309(c) of the Act, 33 U.S.C. § 1319(c), or applicable state laws and regulations respectively except as expressly specified herein.

90. This Consent Decree resolves the civil claims of the United States and the State for civil penalties and injunctive relief for the violations alleged in the Complaint filed herein

through the date of lodging of this Consent Decree.

91. The United States and the State further reserve all rights against Indianapolis with respect to any violations by Indianapolis that occur after the date of lodging of this Consent Decree, and/or for any violations of the Clean Water Act or applicable state law not specifically alleged in the Complaint filed herein, whether they occurred before or after the date of lodging of this Consent Decree.

92. The Parties agree that Indianapolis 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 by the United States and the State pursuant to said laws, regulations, or permits, except as set forth herein.

93. This Consent Decree does not limit or affect the rights of the Parties as against any third parties that are not Parties to this Consent Decree. The Parties recognize that this Consent Decree resolves only matters between Plaintiffs and Indianapolis and that its execution does not preclude Indianapolis from asserting any legal or factual position in any action brought against it by any person or entity not a Party to this Consent Decree.

94. The United States and the State reserve any and all legal

and equitable remedies available to enforce the provisions of this Consent Decree.

95. This Consent Decree shall not limit any authority of the United States or the State under any applicable statute or regulation, including the authority to seek information from Indianapolis, to require monitoring, to conduct inspections, or to seek access to the property of Indianapolis; nor shall anything in this Consent Decree be construed to limit the authority of the United States or the State to undertake any action against any person, including Indianapolis, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

96. Obligations of Indianapolis under the provisions of this Consent Decree to perform duties scheduled to occur after the signing, but prior to the date of entry, shall be legally enforceable from the date this Consent Decree is signed by Indianapolis. Liability for stipulated penalties, if applicable, shall accrue for violation of such obligations and payment of such stipulated penalties may be demanded by the Plaintiffs as provided in this Consent Decree. The contempt authority of this Court shall also extend to violations of such obligations.

#### **XXIII. COSTS OF SUIT**

97. Each Party shall bear its own costs and attorneys' fees.

with respect to matters related to this Consent Decree.

**XXIV. MODIFICATION**

98. Except as provided below, there shall be no material modification of this Consent Decree, Exhibits attached to this Consent Decree, or the submittals approved under this Consent Decree without written approval by all of the Parties and the Court. Any non-material modification of this Consent Decree, its Exhibits, or approved submittals shall be in writing and signed by the Parties. Any modifications to the attached Exhibits or subsequently approved submittals that are specifically allowed under the terms of those Exhibits or submittals may be made in accordance with the terms of those Exhibits or approved submittals. All modifications, whether material or non-material, shall be deemed an enforceable part of this Consent Decree.

**XXV. CONTINUING JURISDICTION**

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

**XXVI. TERMINATION**

100. Upon motion filed with the Court by the United States, Indiana or Indianapolis, the Court may terminate the terms of this

Consent Decree after each of the following has occurred:

(a) Indianapolis has achieved compliance with all provisions contained in this Consent Decree, and subsequently has maintained satisfactory compliance with each and every provision for twelve consecutive months;

(b) Indianapolis has paid all penalties and other monetary obligations due hereunder and no penalties or other monetary obligations due hereunder are outstanding or owed to the United States or Indiana; and

(c) At least 120 days prior to filing the motion, Indianapolis has certified to U.S. EPA and IDEM that it has complied with the requirements of Subparagraphs 100(a) and (b), above and has provided sufficient documentation to U.S. EPA and IDEM to support its certification.

101. The United States or Indiana may dispute whether Indianapolis has complied with the requirements of Paragraph 100, above, in which case this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court in accordance with Section XV of this Consent Decree.

#### **XXVII. PUBLIC COMMENT**

102. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days, for public notice and comment in accordance with the provisions of 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its

consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. Indianapolis hereby agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified Indianapolis in writing that it no longer supports entry of the Consent Decree.

**XXVIII. SIGNATORIES/SERVICE**

103. The Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, on behalf of the United States, the Indiana Assistant Attorney General signing this Consent Decree, on behalf of Indiana, and the undersigned representative of Indianapolis each certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

104. Indianapolis shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of Indianapolis with respect to all matters arising under or relating to this Consent Decree. Indianapolis hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Indianapolis need not file an answer to the

Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

**XXIX. FINAL JUDGMENT**

105. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment of the Court between and among the United States, Indiana, and Indianapolis.

The Court finds there is no just reason for delay and therefore enters this Consent Decree as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.


\_\_\_\_\_  
United States District Judge  
Southern District of Indiana

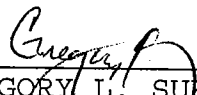


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of Indiana v. City of Indianapolis.

FOR THE UNITED STATES OF AMERICA

DATE: 9/25/06

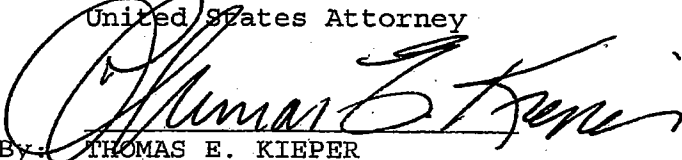
  
SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environmental and Natural Resources  
Division

  
GREGORY L. SUKYS  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-2068

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of Indiana v. City of Indianapolis.

SUSAN W. BROOKS  
United States Attorney

DATE: 9/29/06

  
By: THOMAS E. KIEPER  
Assistant United States Attorney  
Southern District of Indiana  
10 West Market Street, Suite 2100  
Indianapolis, Indiana 46204  
(317) 229-2415

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of Indiana v. City of Indianapolis.

FOR UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY

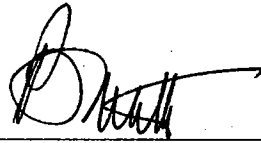


GRANTA Y. NAKAYAMA

Assistant Administrator of Enforcement  
and Compliance Assurance  
United States Environmental Protection  
Agency  
1200 Pennsylvania Avenue  
Washington, D.C. 20460

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of Indiana v. City of Indianapolis.

DATED: 8-21-06



\_\_\_\_\_  
BHARAT MATHUR  
Acting Regional Administrator  
United States Environmental  
Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Il 60604-3590

DATED: August 18, 2006



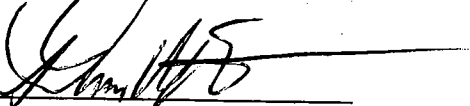
\_\_\_\_\_  
BERTRAM C. FREY  
Acting Regional Counsel  
United States Environmental  
Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Il 60604-3590

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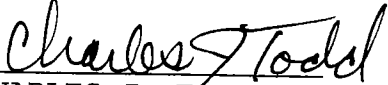
FOR THE STATE OF INDIANA

STEVE CARTER  
Attorney General of Indiana

DATED: 9/11/2006

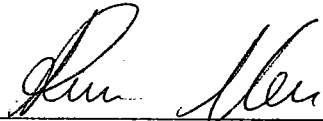
  
THOMAS W. EASTERLY  
Commissioner  
Indiana Department of Environmental  
Management  
100 North Senate Avenue  
IGCN 1301  
Indianapolis, Indiana 46204

DATED: 9-15-06


  
CHARLES J. TODD  
Chief Operating Officer  
Office of the Attorney General  
Indiana Government Center South  
5<sup>th</sup> Floor  
402 West Washington Street  
Indianapolis, IN 46204

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of Indiana v. City of Indianapolis.

FOR THE CITY OF INDIANAPOLIS

By:   
KUMAR MENON  
Director  
Department of Public Works  
City of Indianapolis  
200 East Washington Street  
Suite 2460  
Indianapolis, Indiana 46204

DATED: 9/20/06

By:   
KOBI M. WRIGHT  
Corporation Counsel  
City of Indianapolis  
200 East Washington Street  
Suite 1601  
Indianapolis, Indiana 46204

DATED: 9/20/06

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

UNITED STATES OF AMERICA, )  
 )  
and )  
 )  
THE STATE OF INDIANA, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
THE CITY OF INDIANAPOLIS, )  
INDIANA, A Municipal )  
Corporation, )  
 )  
Defendant. )  
\_\_\_\_\_ )

CONSENT DECREE

EXHIBIT 1

TABLE 7-5 OF SECTION 7 OF THE LTCP

Table 7-5

Exhibit 1

## CSO Control Measures, Design Criteria, Performance Criteria, and Critical Milestones

CSO Control Measure <sup>1</sup>		Description <sup>2</sup>	Design Criteria <sup>2</sup>	Performance Criteria	Critical Milestones <sup>3</sup>
1	White River Screen at IUPUI (CSO 039)	Horizontal screen with automatic clearing for removal of floatables	Provide instantaneous peak screening flow rate of 63 MGD	Capture most floatables greater than 4 mm in size	Bid Year – 2001 Achievement of Full Operation – 2002
2	Fall Creek Inflatable Dams (CSOs 063, 063A, and 065) <sup>4</sup>	Construction of three inflatable dams	Provide in-system storage capacity of approximately 4.6 MG	Consistent Operation <sup>5</sup>	Bid Year – 2001 Achievement of Full Operation – 2006
3	Modifications to Lift Station 507 at Riviera Club	Modifications to CSO 156 to take advantage of available storage volume in LS 507	Maximize in-system storage	Diversion of flow from CSO 156 to LS 507. When incorporated with the rest of the White River watershed, achieve 95 percent capture and 4 overflow events <sup>6</sup>	Bid Year – 2002 Achievement of Full Operation – 2002
4	Real-time Overflow Controls in Neighborhoods (CSOs 080, 084, 118) <sup>4</sup>	Construction of three inflatable dams	Provide in-system storage capacity of approximately 0.5 MG	Consistent Operation <sup>5</sup>	Bid Year – 2002 Achievement of Full Operation – 2003
5	Pogues Run Inflatable Dam at Brookside Park (CSO 101) <sup>4</sup>	Construction of one inflatable dam	Provide in-system storage capacity of approximately 0.4 MG	Consistent Operation <sup>5</sup>	Bid Year – 2003 Achievement of Full Operation – 2004
6	White River East Bank Storage Tank at IUPUI/White River State Park <sup>4</sup>	Overflow storage for CSO 039	Provide storage capacity of 3 MG	When incorporated with the rest of the White River watershed, achieve 95 percent capture and 4 overflow events <sup>6</sup>	Bid Year – 2003 Achievement of Full Operation (CSO 39 Only) – 2004
7	Belmont Advanced Wastewater Treatment (AWT) Plant Improvements – Wet-Weather Storage and Primary Clarifiers	Wet-weather storage basins (30 and 4 MG), two new primary clarifiers, and new process/yard piping	When incorporated with the rest of the Belmont Improvements, provide peak primary and biological treatment rate of 300 MGD	When incorporated with the rest of the Belmont improvements, facility complies with current NPDES permit	Bid Year – 2003 Achievement of Full Operation – 2007
8	Lower Pogues Run Improvements - Minimize Overflows near IPS Schools	Consolidation of outfalls 034 and 035 to Pogues Run Tunnel. Consolidation sewer is approximately 5200 feet of pipe	Provide approximate instantaneous peak flowrate of 40 MGD upstream. Provide approximate maximum instantaneous peak flowrate of 150 MGD downstream	When incorporated with the rest of the Pogues Run watershed, achieve 95 percent capture and 4 overflow events <sup>6</sup>	Bid Year – 2004 Achievement of Full Operation – 2006
9	Belmont AWT – Gravity Belt Thickeners	Installation of four gravity belt thickeners	Produce a thickened sludge concentration of 5% total solids (TS)	Reduction of sludge volumes and improved sludge dewatering operations.	Bid Year – 2006 Achievement of Full Operation – 2008
10	Sewer Separation - White River and Thompson Road (CSO 275)	Separation and rehabilitation of sewers to reduce stormwater flow and minimize CSO 275	Storm drains designed as per Indianapolis Stormwater Standards. Sanitary sewer designed as per Indianapolis Sanitary Standards and Ten State Standards	Separation of sewers to minimize CSO 275.	Bid Year – 2006 Achievement of Full Operation - 2008
11	Sewer Separation - Lick Creek (CSO 235)	Separation and rehabilitation of sewers to reduce storm water flow and minimize CSO 235	Storm drains designed as per Indianapolis Stormwater Standards. Sanitary sewer designed as per Indianapolis Sanitary Standards and Ten State Standards	Separation of sewers to minimize CSO 235.	Bid Year – 2006 Achievement of Full Operation - 2008
12	Real Time Overflow Control Study, Phase II	Develop next phase of RTC to further maximize the existing combined sewer system	Evaluate RTC for combined sewer system	Completed Study	Commence study – 2007 Complete study – 2008
13	Rerouting of Overflows on Upper White River to Lift Station 507 at Riviera Club (CSO 205)	Relocation of CSO 205 outfall to Lift Station 507. Includes rehabilitation of upstream sewers to eliminate clearwater infiltration	Provide approximate instantaneous peak flowrate of 25 MGD	When incorporated with the rest of the White River watershed, achieve 95 percent capture and 4 overflow events <sup>6</sup>	Bid Year – 2008 Achievement of Full Operation – 2010



Table 7-5

CSO Control Measures, Design Criteria, Performance Criteria, and Critical Milestones

CSO Control Measure <sup>1</sup>		Description <sup>2</sup>	Design Criteria <sup>2</sup>	Performance Criteria	Critical Milestones <sup>3</sup>
14	Riviera Club Improvements to Overflow Storage Tank	Add wet-weather disinfection to existing satellite storage facility	Provide approximate instantaneous peak disinfection flow rate of 53 MGD	When incorporated with the rest of the White River watershed, achieve 95 percent capture and 4 overflow events <sup>6</sup>	Bid Year – 2009 Achievement of Full Operation – 2011
15	Fall Creek Tunnel, Collector Pipes and Watershed Projects	Deep storage tunnel, consolidation sewers, elimination of CSO 103, dam removal, aeration <sup>6</sup>	Provide a storage volume of 110 MG	When incorporated with the rest of the Fall Creek watershed, achieve 97 percent capture and 2 overflow events <sup>6</sup>	Bid Year – 2006 Achievement of Full Operation – 2025
16	Interplant Connection	Interceptor originating near CSO 117 and terminating near the headworks of the Southport facility <sup>6</sup>	Peak diversion of 150 MGD CSO flow to Southport	Deliver flow from White River Tunnel to Southport AWT plant	Bid Year – 2008 Achievement of Full Operation – 2012
17	Belmont AWT - Wet-Weather Treatment (Trickling Filters/Solids Contact: New aeration tanks and intermediate clarifiers)	Provide secondary biological treatment of the Belmont PE Bypass	Provide parallel peak biological treatment rate of 150 MGD	When incorporated with the rest of the Belmont improvements, facility complies with current NPDES permit	Bid Year – 2009 Achievement of Full Operation – 2012
18	Lower Pogues Run Improvements - Continued	Conversion of existing Pogues Run Box into CSO storage facility ranging from 1.5 to 10 MG and interceptor	Diversion of CSO to White River Tunnel	When incorporated with the rest of the Pogues Run and White River watersheds, achieve 95 percent capture and 4 overflow events <sup>6</sup>	Bid Year – 2010 Achievement of Full Operation – 2012
19	Pogues Run - Sewer Separation at Forest Manor Park (CSO 143)	Sewer separation that minimizes CSO 143	Storm drains designed as per Indianapolis Stormwater Standards. Sanitary sewer designed as per Indianapolis Sanitary Standards and Ten State Standards	Separation of sewers to minimize CSO 143	Bid Year – 2010 Achievement of Full Operation – 2012
20	White River Tunnel (Central Tunnel and Pump Station) and Watershed Projects	Central tunnel and pump station, consolidation sewers, sewer separation, dam modifications, and aeration <sup>6</sup>	Provide storage volume of 114 MG	When incorporated with the rest of the White River watershed, achieve 95 percent capture and 4 overflow events <sup>6</sup>	Bid Year – 2010 Achievement of Full Operation – 2021
21	Belmont AWT – Wet Weather Chlorination / Dechlorination (Chlorine Disinfection Tank and Re-establish Existing Outfall)	New wet-weather disinfection system and new discharge to White River	Additional peak disinfection treatment rate of 150 MGD	When incorporated with the rest of the Belmont improvements, facility complies with current NPDES permit	Bid Year – 2010 Achievement of Full Operation – 2012
22	Southport Advanced Wastewater Treatment Plant Improvements – Air Nitrification System (ANS) Expansion	Expansion of ANS from 30 MGD to 150 MGD, fine bubble aeration, new blowers, new final clarifiers, and new process/yard piping	When incorporated with the rest of the Southport Improvements, provide total peak treatment rate of 300 MGD. Provide maximum pumping rate of 350 MGD	When incorporated with the rest of the Southport improvements, facility complies with current NPDES permit	Bid Year – 2010 Achievement of Full Operation – 2016
23	Southport Advanced Wastewater Treatment Plant Improvements – Wet Weather Disinfection	New disinfection facility, pump station, 25 MG equalization basin with aerators, and new process/yard piping	When incorporated with the rest of the Southport Improvements, provide total peak treatment rate of 300 MGD. Provide maximum pumping rate of 350 MGD	When incorporated with the rest of the Southport improvements, facility complies with current NPDES permit	Bid Year – 2011 Achievement of Full Operation – 2016
24	Southport Advanced Wastewater Treatment Plant Improvements – Primary Clarifier Expansion	Expansion of primary clarification facility, and new process/yard piping	When incorporated with the rest of the Southport Improvements, provide peak primary treatment capacity of 300 MGD. Provide maximum pumping rate of 350 MGD	When incorporated with the rest of the Southport improvements, facility complies with current NPDES permit	Bid Year – 2012 Achievement of Full Operation – 2017

**Table 7-5  
CSO Control Measures, Design Criteria, Performance Criteria, and Critical Milestones**

CSO Control Measure <sup>1</sup>		Description <sup>2</sup>	Design Criteria <sup>2</sup>	Performance Criteria	Critical Milestones <sup>3</sup>
25	Belmont Advanced Wastewater Treatment Plant Improvements – Headworks and Grit Removal including Screens	Rehabilitation of the original headworks, new process/yard piping and supplemental disinfection from existing equalization basins	When incorporated with the rest of the Belmont Improvements, provide total peak primary and biological treatment rate of 300 MGD. Provide peak pumping rate of 450 MGD. Additional Disinfection of equalization outflow up to a peak rate of 150 MGD	When incorporated with the rest of the Belmont improvements, facility complies with current NPDES permit	Bid Year – 2015 Achievement of Full Operation – 2019
26	Southport Advanced Wastewater Treatment Plant Improvements – Headworks	Expansion of headworks, screening, grit removal, and new process/yard piping	When incorporated with the rest of the Southport Improvements, provide total peak treatment rate of 300 MGD. Provide peak pumping rate of 350 MGD	When incorporated with the rest of the Southport improvements, facility complies with current NPDES permit	Bid Year – 2015 Achievement of Full Operation – 2018
27	Southport Advanced Wastewater Treatment Plant Improvements – CSO Pump Station	New pump station for additional dewatering of captured CSO from the Interplant Connection	Additional 75 MGD for routing to Enhanced High Rate Clarifiers (EHRC)	When incorporated with the rest of the Southport improvements, facility complies with current NPDES permit	Bid Year – 2022 Achievement of Full Operation – 2025
28	Southport Advanced Wastewater Treatment Plant Improvements – EHRC Facility <sup>7</sup>	New enhanced high rate clarifiers, and new process/yard piping	Additional 75 MGD EHRC treatment for dewatering of captured CSO from the Interplant Connection	When incorporated with the rest of the Southport improvements, facility complies with current NPDES permit	Bid Year – 2022 Achievement of Full Operation – 2025
29	Pleasant Run Overflow Collector Pipe (CSO Collector Pipe)	Collection interceptor and sewer separation. Collection interceptor is approximately 46,000 feet of pipe <sup>8</sup>	Provide approximate instantaneous peak flowrate of 125 MGD at the downstream end	When incorporated with the rest of the Pleasant Run watershed, achieve 95 percent capture and 4 overflow events <sup>6</sup>	Bid Year – 2010 Achievement of Full Operation – 2025
30	Eagle Creek Overflow Collector Pipe (CSO Collector Pipe and Belmont West Cutoff)	Collection interceptor and relief interceptor. Collection interceptor and relief interceptor are approximately 40,000 feet of pipe <sup>8</sup>	Provide approximate instantaneous peak flowrate of 50 MGD at the downstream end	When incorporated with the rest of the Eagle Creek and White River watersheds, achieve 95 percent capture and 4 overflow events <sup>6</sup>	Bid Year – 2013 Achievement of Full Operation – 2018
31	Upper Pogues Run Improvements	Off-line storage facility, collection interceptor. Collection interceptor is approximately 9000 feet of pipe <sup>8</sup>	Provide approximate instantaneous peak flowrate of 65 MGD. Provide approximate storage volume of 9.5 MG	When incorporated with the rest of the Pogues Run watershed, achieve 95 percent capture and 4 overflow events <sup>6</sup>	Bid Year – 2017 Achievement of Full Operation – 2021

**Footnotes:**

<sup>1</sup> Upon full implementation, the CSO Control Measures listed in Table 7-5 are expected to result in 95 percent capture and 4 CSO events on the White River, Pleasant Run, Pogues Run, and Eagle Creek and 97 percent capture and 2 CSO events on Fall Creek, as evaluated in accordance with footnote 6. Either a revision to Indiana's current water quality standards or some other legal mechanism is necessary to authorize overflows due to storms exceeding those levels of control. In Section 9 of the LTCP, the City of Indianapolis is requesting a revision to the applicable water quality criteria consistent with this level of control through the establishment of a CSO wet weather limited use subcategory supported by a Use Attainability Analysis ("UAA"). The design and construction of CSO Control Measures 1 through 14 ("Phase I" Projects) are not dependent upon the level of control ultimately determined, and therefore the city will implement CSO Control Measures 1 through 14 according to the terms and schedule set forth in this Table. IDEM and U.S. EPA acknowledge that the city is scheduled to start investing heavily in CSO Control Measures 15 through 31, which are level of control-dependent, in the years following approval of the city's LTCP. Accordingly, all parties intend that the UAA process be completed within five years of LTCP approval. If the UAA process is not completed within five years, IDEM and U.S. EPA agree that, under certain circumstances, the city can seek a modification of the implementation schedule.

<sup>2</sup> The Description and Design Criteria are based upon LTCP-level planning estimates and may be subject to revision during facility planning and design. One of the conditions of Descriptions and Design Criteria, applicable to all of the facilities set forth in this Table 7-5 is that the specific facility will be designed in accordance with good engineering practices to ensure that corresponding facility-specific, watershed-wide, and systemwide Performance Criteria will be achieved.

<sup>3</sup> The term "Bid Year" means "Completion of the Bidding Process."

## Table 7-5

Exhibit 1

### CSO Control Measures, Design Criteria, Performance Criteria, and Critical Milestones

#### Table 7-5 Footnotes (continued)

<sup>4</sup> The CSO control measure is not expected to achieve 95 or 97 percent capture on its own and will work in conjunction with other CSO control measures at the specified CSO outfalls to achieve the performance criteria.

<sup>5</sup> Consistent Operation: Performs as designed on a regular basis. Failure to perform correctly is infrequent.

<sup>6</sup> CSO Control Measures will be designed to achieve Performance Criteria of 97 percent capture for the Fall Creek watershed and 95 percent capture for other CSO receiving waters, and 2 CSO events for the Fall Creek watershed and 4 CSO events for each of the other CSO receiving waters in a "typical year." "Typical year" performance, and achievement of Performance Criteria, shall be assessed in accordance with Section 8.4 (Post Construction Monitoring) using the average annual statistics generated by the collection system model for the representative five-year simulation period of 1996 to 2000 (or another five-year simulation period subsequently proposed by the city and approved by IDEM and U.S. EPA).

<sup>7</sup> The Southport EHRC facility will be constructed only if required to achieve the performance criteria for the Fall Creek and White River watersheds.

<sup>8</sup> The collection interceptor may be installed as multiple interceptor with the combined capacity as described in the Design Criteria.

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

UNITED STATES OF AMERICA, )  
 )  
and )  
 )  
THE STATE OF INDIANA, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
THE CITY OF INDIANAPOLIS, )  
INDIANA, A Municipal )  
Corporation, )  
 )  
Defendant. )  
\_\_\_\_\_ )

CONSENT DECREE

EXHIBIT 2

SECTION 8 OF THE LTCP

# Post-Construction Monitoring Program

## 8.0 Post-Construction Monitoring Program

### Contents:

- 8.1 Introduction
- 8.2 Program Elements
- 8.3 Post-Construction Monitoring and Data Collection
- 8.4 Data Retrieval, Management and Analysis
- 8.5 Quality Control
- 8.6 Data Evaluation and Progress Reporting
- 8.7 Summary

## 8.1 Introduction

The city's watershed approach to improving water quality includes a water quality monitoring program that enables the city to understand overall stream conditions and track changes in water quality over time. Although not legally required, the city's comprehensive water quality monitoring program is an important component of the city's ongoing commitment to stewardship of our streams.

When implemented, the CSO control measures will improve water quality. This section describes the city's program for conducting post construction monitoring studies related to CSO control measures, as it fits into the city's broader water quality monitoring program. The Post-Construction Monitoring Program will document the effectiveness of the city's overall CSO control program in achieving design requirements and water quality goals. The CSO Post-Construction Monitoring Program includes the following elements:

- Actions to determine whether CSO control measures are meeting the Performance Criteria in Table 7-5;
- Actions to assess the environmental benefits attributable to CSO control measures and to determine whether the city's CSO discharges are complying with the water quality-based requirements of the city's NPDES permits;
- A monitoring schedule, sampling locations, and associated monitoring procedures to collect data related to the Performance Criteria and the impacts from CSOs on dissolved oxygen and *E. coli* levels in CSO-impacted receiving streams; and
- Evaluation and analysis of the monitoring data to determine whether CSO control measures are achieving the desired results and for reporting progress to regulatory agencies and the public.

The program will monitor the performance of CSO control measures on a watershed basis, as well as assess the program's overall effectiveness in improving water quality and capturing sewage (i.e., 97 percent capture/2 overflow events on Fall Creek and 95 percent capture/4 overflow events on White River, Pogues Run, Pleasant Run and Eagle Creek in a typical year.) The frequency of CSO overflow events will vary year-to-year because of variation in annual rainfall. Where the level of control is 4 overflow events per typical year, actual overflow frequency is expected to range from 0 to 10 overflow events per year; where the level of control is 2 overflow events per typical year, the actual frequency is expected to range from 0 to 6 overflow events per year. The Department of Public Works (DPW) will compile monitoring results, submit milestone reports to the regulatory agencies, and report progress to the public.

### 8.1.1 Regulatory Requirements

U.S.EPA requires CSO communities to conduct a post-construction monitoring program during and after LTCP implementation "to help determine the effectiveness of the overall program in meeting [Clean Water Act] requirements and achieving local water quality goals."<sup>1</sup> This program should collect data that measure the effectiveness of CSO controls and their impact on water quality, and should utilize existing monitoring stations used in previous studies of the waterways and sewer system in order to compare results to conditions before controls were put in place. The program should include a map of monitoring stations, a record of sampling frequency at each station, a list of data to be collected, and a quality assurance/quality control (QA/QC) plan.

In U.S.EPA's December 2001 Report to Congress: Implementation and Enforcement of the Combined Sewer Overflow Control Policy, the agency noted the difficulty of establishing a monitoring and tracking program for CSO control programs. "Monitoring programs need to be targeted and implemented in a consistent manner from year to year to be able to establish pre-control baseline conditions and to identify meaningful trends over time as CSO controls are implemented," the report said. "In practice, it is often difficult, and in some instances impossible, to link environmental conditions or results to a single source of pollution, such as CSOs. In most instances, water quality is impacted by multiple sources, and trends over time reflect the change in loadings on a watershed scale from a variety of environmental programs." The report also noted that weather con-

<sup>1</sup> *Combined Sewer Overflows, Guidance for Long-Term Control Plan* (EPA 832-B-95-002, August 1995) p. 4-15.



# Post-Construction Monitoring Program

ditions and rainfall totals vary significantly from storm to storm and year to year, making comparisons difficult.

## 8.1.2 Purpose and Scope

The post-construction monitoring program will collect data needed to document stream improvements that can be attributed to implementation of CSO control measures by the City of Indianapolis, to evaluate whether CSO control measures have met Performance Criteria, and to evaluate whether the city's CSOs comply with the NPDES permits. In order to enable comparisons to historic data, the city will integrate the required CSO post-construction monitoring program into its current ongoing monitoring programs. The scope of the post-construction monitoring program includes preparation and execution of a monitoring plan, as well as evaluation of the effectiveness of CSO control measures. Watersheds or receiving waters included in this plan are Fall Creek, Pagues Run, Pleasant Run, Bean Creek, Eagle Creek, Little Eagle Creek, Lick Creek, and White River. The monitoring program has been developed based upon the following scope of work:

- **Document Current Baseline Conditions:** During planning and preparation of the long-term control plan, Indianapolis completed a comprehensive watershed assessment documenting water quality conditions in major CSO-impacted receiving streams, as well as estimated pollutant loads for all major watersheds. This assessment established baseline conditions within watersheds and in-stream water quality data, as documented in Section 2.
- **Identify Parameters of Concern:** The city evaluated various CSO control measures to analyze their ability to improve receiving stream water quality for specific parameters of concern, as described in Section 4. During the development of the LTCP and discussions with U.S. EPA and IDEM, the city identified dissolved oxygen and *E. coli* bacteria as the parameters of concern. The city will use dissolved oxygen and *E. coli* bacteria (or other applicable pathogen or pathogen indicator as described below) to measure the effect of its long term CSO control measures on receiving streams.
- **Prepare and Execute Post-Construction Monitoring:** The monitoring program will evaluate whether specific CSO control measures are performing as designed and constructed. It identifies how the city will collect data needed to document stream improvements and any pollutant reduction achieved through implementation of CSO control measures. Sections 8.2 through

8.5 further describe the city's post-construction monitoring plan.

- **Report Results to State and Federal Agencies:** The results of the monitoring program will be reported to the U.S. EPA and IDEM. After completion of the CSO projects in a particular watershed, the city will prepare milestone reports that evaluate whether the constructed projects have achieved the desired results. Section 8.6 presents the city's approach for tracking and reporting on the achievement of design and performance criteria described in Table 7-5.
- **Provide Public Information on Water Quality:** Information from the monitoring program will be available to Indianapolis citizens, businesses, neighborhood associations and environmental organizations. This information will allow the public to be better informed and educated about the city's water quality improvement programs and water quality issues.

## 8.2 Program Elements

The city will construct long-term CSO control measures according to the implementation schedule presented in Table 7-5 in Section 7. Upon Achievement of Full Operation in each watershed, the CSO control measures will be monitored and evaluated on a watershed basis to determine whether the Performance Criteria in Table 7-5 have been achieved and the effect on receiving stream water quality.

### 8.2.1 Performance Criteria

Performance Criteria are those used to assess the performance of CSO control facilities, and CSO control measures will be designed and constructed to meet the Performance Criteria established in Table 7-5. The city will monitor CSO outfalls as described in this section to demonstrate that the Performance Criteria have been met.

Table 8-1 illustrates how the CSO Control Measures in Table 7-5 will be monitored and assessed by watershed. The city will carry out this evaluation by collecting precipitation and CSO outfall monitoring data for 12 months following the Achievement of Full Operation of all CSO control measures in each watershed. Following collection system model validation using the monitoring data, a continuous simulation based upon a five-year simulation period will determine "typical year" performance within the watershed for CSO volume, overflow frequency and percent capture. The Lower Pagues Run and Eagle Creek watersheds require



# Post-Construction Monitoring Program

**Table 8-1  
Post-Construction Monitoring for CSO Control Measures by Watershed**

Watershed	CSO Control Measure	CSO Outfalls	12-Month Monitoring Data		Typical Year Performance			Overflow Frequency Performance Criteria Achieved (Yes / No)	Percent Capture Performance Criteria Achieved (Yes / No)	Comments
			CSO Volume (MG)	Overflow Frequency by Watershed	CSO Volume (MG)	Overflow Frequency by Watershed	Percent Capture (%)			
Upper White River	Riviera Club Improvements to Overflow Storage Tank Includes CSO Control Measures # 3, 13, 14	155, 205								
Fall Creek	Fall Creek Tunnel, Collector Pipes and Watershed Projects Includes CSO Control Measures # 2, 15	210, 049, 050, 050A, 051, 052, 053, 131, 054, 055, 132, 057, 058, 059, 060, 061, 213, 062, 063, 063A, 064, 065, 066, 142, 141, 135, 216, 103								
Lower Pogues Run	Lower Pogues Run Improvements Includes CSO Control Measures # 8, 18	115, 125, 128, 153, 129, 138, A38, 133, 137, 152, 136, 034, 34A, 035								
Lower White River	White River Tunnel (Central Tunnel and Pump Station) and Watershed Projects Includes CSO Control Measures # 1, 4, 6, 7, 9, 10, 11, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28	003, 008, 012, 013, 118, 117, 116, 037, 038, 039, 040, 147, 041, 042, 043, 044, 045, 046, 217, 218, 235, 275								
Pleasant Run and Bean Creek	Pleasant Run Overflow Collector Pipe (CSO Collector Pipe) Includes CSO Control Measures # 4, 29	120, 019, 020, 148, 021, 130, 149, 150, 022, 119, 151, 023, 025, 027, 127, 028, 029, 030, 106, 031, 105, 108, 107, 072, 073, 074, 075, 076, 077, 078, 080, 081, 224, 083, 154, 084, 085, 086, 227, 087, 088, 228, 229, 089, 089A, 090, 091, 092, 015, 016, 017								
Eagle Creek	Eagle Creek Overflow Collector Pipe (CSO Collector Pipe and Belmont West Culvert) Includes CSO Control Measure # 30	145, 011, 032, 223, 033								
Upper Pogues Run	Upper Pogues Run Improvements Includes CSO Control Measures # 5, # 19, #31	036, 095, 096, 097, 098, 099, 100, 101, 102, 143								

<sup>1</sup> CSO Control Measures are listed in LTCP Table 7-5 along with Achievement of Full Operation (AFO) dates.

<sup>2</sup> Monitoring Schedule: Monitoring will be conducted, upon completion of construction, for a series of rainfall events, until the later of (a) 12 months or (b) a sufficient number of rainfall events consistent with design criteria have occurred so that sufficient sampling data has been obtained.

<sup>3</sup> Typical year performance criteria of 97 percent capture and 2 overflow events (for Fall Creek) or 95 percent capture and 4 overflow events (all other CSO receiving waters) is based on average annual statistics over a representative five-year simulation period using the collection system model. "Typical year" performance shall be assessed based upon the average annual statistics generated for the representative five year simulation period of 1996 to 2000 (or another five year simulation period agreed to by the city, IDEM and U.S. EPA) using the collection system model.

<sup>4</sup> Milestone reports on the achievement of performance criteria will be prepared for each watershed, as described in Section 8.6.1.



# Post-Construction Monitoring Program

completion of the Lower White River watershed to fully achieve their performance criteria. For this reason, monitoring data will be collected for the Lower Pogue Run and Eagle Creek watersheds after Achievement of Full Operation in both the Lower White River and the tributary watershed (i.e., Lower Pogue Run or Eagle Creek).

## 8.2.2 Water Quality Measures

Water Quality Measures are those used to assess the impacts of residual overflows that occur as well as improvements in water quality of receiving streams due to implementation of CSO control measures. The city will use as its water quality measures dissolved oxygen and *E. coli* bacteria (or other pathogen indicator, to the extent applicable water quality standards have been revised to include a different applicable pathogen indicator). In discussions with the regulatory agencies during the development of the LTCP, these parameters were identified as the parameters of concern.

**Dissolved Oxygen (DO):** The city will collect data to confirm that the approved LTCP is adequate to ensure that the residual CSOs do not cause or contribute to the violation of Indiana's instream DO standard of 4 mg/L minimum and 5 mg/L average per day.

***E. coli* Bacteria:** The city will collect data to measure and evaluate improvements to instream *E. coli* bacteria counts that can be attributed to CSO control measures. It is unlikely that CSO controls alone will result in attainment of Indiana's *E. coli* standards for primary contact recreation due to numerous *E. coli* sources in the environment. Therefore, there are no numeric targets for *E. coli* as a water quality measure. Rather, the city will analyze trends in both dry weather and wet-weather *E. coli* values and compare them to historic monitoring data and modeling predictions to determine improvement in water quality and to ensure that residual CSO discharges do not interfere with applicable recreational uses. A different pathogen indicator other than *E. coli* may be requested by IDEM in accordance with this paragraph to the extent the applicable water quality standards are revised to include a different pathogen indicator.

## 8.3 Post-Construction Monitoring and Data Collection

### 8.3.1 Monitoring Schedule

The post-construction monitoring schedule, shown in Table 8-1, will be integrated with the city's current monitoring programs, as described below.

### 8.3.2 Monitoring Stations

Starting with a list of existing city monitoring locations, the city identified stations that would collect data needed to document stream improvements attributed to the implementation of CSO control measures. Monitoring sites also were chosen to allow assessment of various water quality improvement programs, such as the Stormwater Program, AWT Plant NPDES Permit Program and the development of the Total Maximum Daily Load. The city's monitoring program comprehensively assesses the measurable improvements in water quality of the receiving streams.

The city used the following criteria to select monitoring locations:

- Ability of monitoring stations to measure effectiveness of planned CSO control measures
- Proximity of receiving stream monitoring points to planned CSO control measures
- Ability to keep monitoring stations at the same locations used to establish baseline conditions (to aid in proper comparison of water quality results)
- Ability of monitoring stations to represent watershed characteristics and evaluate multiple factors, including land use, point sources, non-point sources, industrial sources, and so on
- Ability of monitoring stations to equally represent the different watersheds within the city for each station type
- Selection of major CSO outfalls for monitoring purposes to document measurable CSO reduction as a result of the controls (discharge volume, hydraulic control points, geographical area, and so on)
- Ability of monitoring stations to integrate and assess effectiveness of the city's multiple monitoring programs
- Site accessibility and local site conditions

The city uses a network of real-time and/or continuous monitoring stations to measure the following parameters:





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

UNITED STATES OF AMERICA, )  
 )  
and )  
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THE STATE OF INDIANA, )  
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Plaintiffs, )  
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v. )  
 )  
THE CITY OF INDIANAPOLIS, )  
INDIANA, A Municipal )  
Corporation, )  
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Defendant. )  
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EXHIBIT 3

SANITARY SEWER SYSTEM CAPITAL IMPROVEMENT PROJECTS

# Post-Construction Monitoring Program

## 8.3.5 Water Quality Monitoring

The city's ongoing water quality monitoring program will be useful to evaluate the effects of CSO control measures. The USGS currently has one real-time stream water temperature monitoring stations. USGS is expected to continue to monitor water temperature at this site. In addition to the monitoring required under this Post-Construction Monitoring Program necessary to evaluate the impacts of CSOs on dissolved oxygen and *E. coli* (or other pathogens) levels in the CSO-impacted receiving streams, OES will continue, at the city's discretion, its current voluntary programs of monthly water quality monitoring. The city will follow standard data collection, quality control and laboratory analysis protocols and procedures, including the components listed below.

### Sample and Field Data Collection Procedures:

#### Pre Sampling Procedures:

- Select personnel and identify responsibilities
- Train personnel in safety and confined space entry; verify first aid and wet-weather training, CPR, currency of vaccinations, and so on)
- Prepare site access and obtain legal consents
- Acquire necessary scientific sampling or collecting permits
- Develop formats for field sampling logs and diaries
- Train personnel in pre sampling procedures (purging supply lines, instrument calibration)
- Check equipment availability, acquisition, and maintenance
- Schedule sample collection
- Prepare pre-sampling checklist

#### Sampling Procedures:

- Prepare document for sampling procedures
- Evaluate staff qualifications and provide training
- Establish sampling protocols
- Establish quality control procedures (equipment checks, replicates, splits, and so on)
- Collect samples in required sample containers
- Label sample containers identifying sample number, date, time, location, and so on
- Preserve samples per required procedures (for example, "on ice" or chemical preservatives)
- Obtain field measurements for streamflow discharge
- Collect samples and perform field tests for DO, temperature, pH, and conductivity

- Complete field logs and diary entries including sampling dates, times, sample identification number, equipment calibration, monitoring results, weather conditions, and other pertinent observations in support of sample collection
- Follow sample storage and transport requirements and deliver samples to laboratory
- Complete sample tracking and chain-of-custody reports and audit reports
- Perform quality control and quality assurance

#### Post Sampling Follow Up:

- File sample logs and diaries
- Clean and maintain equipment
- Handle and dispose of chemical wastes properly
- Review documentation and audit reports

#### Laboratory Analysis:

#### Preparation Prior to Sample Analysis:

- Verify use of proper analytical methods
- Schedule analyses
- Verify sample numbers
- Define a recording system for sample results
- Apply a system to check each sample through the lab
- Maintain and calibrate equipment
- Prepare quality control solutions

#### Sample Analysis:

- Analyze samples using appropriate methods and protocols
- Validate use of reference samples, duplicates, blanks, etc.
- Perform quality control and quality assurance compliance
- Archive samples
- Handle and properly disposal of chemical wastes
- Prepare bench sheets and complete analysis reports

#### Data Record Verification:

- Review coding sheets, data loggers
- Review and refine data verification procedures and compliance with project plan
- Verify analysis of splits within data quality objectives
- Assign data quality indicators and explanations



# Post-Construction Monitoring Program

## 8.3.6 AWT Plant Effluent Monitoring

The city will monitor three effluent locations using pollutant sampling and discharge equipment so that the data collected can be used to satisfy multiple monitoring objectives. Of these three stations, two will be at the Belmont AWT plant and one will be at the Southport AWT plant.

Existing final effluent locations at Belmont (Outfall 006) and Southport (Outfall 001) AWT plants will be monitored as required under applicable NPDES permits. An additional effluent location at the Belmont plant (outfall 005) will be monitored as required through the 2006 wet-weather modification to the Belmont NPDES permit.

## 8.3.7 Rainfall Monitoring

The city has 25 rain gauge monitoring stations across the CSO service area. During validation of the CSO system model, the city demonstrated that the existing rain gauge network provided sufficient data. As such, the city will continue to monitor rainfall using rain gauge stations. Rainfall monitoring will occur for each storm event during the post-construction monitoring period to record each storm event. The 25-gauge network and the radar rainfall system will be used to characterize rainfall in each sub-basin.

## 8.4 Data Retrieval, Management and Analysis

Data retrieval, management and analysis are an integral part of any monitoring program. The city currently has a system to store, retrieve, and analyze the existing data. This post-construction monitoring program was developed to use the existing database and to evaluate new data to measure effectiveness of CSO control measures utilizing current modeling tools. The program activities are designed to ensure collection of appropriate data, establish consistency of sampling methods and data acquisition, and define performance standards for maintaining data integrity. All necessary measures will be taken to validate, track, store and manage the collected data to ensure that monitoring objectives are attained.

Specific sampling protocols are administered and conducted by experienced personnel responsible for the existing database and model and familiar with sampling protocols in support of the ongoing monitoring program for the City of Indianapolis. As data are generated during post-construction monitoring, the program may need to be revised to accommodate alternative data collection techniques or data evaluation approaches to meet monitoring objectives. Any revisions or additions to the data retrieval or management

aspects of such program will be made after consulting with IDEM and U.S. EPA.

The City has developed a dynamic model that fully integrates the hydrology and hydraulics of the combined sewer system (collection system model). The city will utilize sound engineering judgement and best industry practices, and take the following steps, to update and utilize the collection system model to determine whether the city has achieved compliance with the Performance Criteria set forth in Table 7-5.

1. Collect data for the 12-month post-construction monitoring period in each watershed in accordance with Section 8.2.1.
2. Perform quality assurance and quality control of the data collected in Step 1.
3. Utilize the Model in its previously-calibrated state and the rainfall data collected during the monitoring period, to run a continuous simulation of CSO discharges for the 12-month post-construction monitoring period.
4. Compare the continuous simulation outputs to the CSO monitoring data for the 12-month post-construction monitoring period to determine whether re-calibration of the collection system model is needed. Model re-calibration will be not be needed if the model achieves at least the same degree of calibration as was achieved for pre-CSO Long-Term Control conditions during the LTCP development process, and there is a high degree of agreement between the model output and CSO monitoring data for activation frequency for the 12-month post-construction monitoring period. Otherwise, model re-calibration will be needed in accordance with Steps 5-7.
5. If re-calibration is needed, select two or more appropriate rainfall events from the 12-month post-construction monitoring period for model recalibration.
6. Develop an initial data set for use with the model and perform successive applications of the model with appropriate parameter adjustment until there is a high degree of agreement between the model output and the CSO monitoring data for the 12-month post-construction monitoring period. In making such adjustments, the city will consider the inherent variability in both the collection system model and in flow monitoring data, and will exercise sound engineering judgement and best industry practices so as to not compromise the overall representativeness of the model.
7. Once the model has been re-calibrated in accordance with Step 6, the city will verify the re-calibrated model by again utilizing the model and the rainfall data collected during the 12-month post-construction monitoring period, to run another continuous simulation for the 12-month post-construction monitoring period. The city will again com-



# Post-Construction Monitoring Program

pare the continuous simulation outputs to the CSO monitoring data for the 12-month post-construction monitoring period as described in Step 4, to determine whether additional re-calibration of the collection system model is needed. Re-calibration will be determined to be adequate if the model achieves at least the same degree of calibration, as was achieved for pre-CSO Long-Term Control conditions during the LTCP development process, and there is a high degree of agreement between the model output and CSO monitoring data for activation frequency for the 12-month post-construction monitoring period. Otherwise, further re-calibration will be needed in accordance with these Steps 5-7 until the model achieves at least the same degree of calibration as was achieved for pre-CSO Long-Term Control conditions during the LTCP development process, and there is a high degree of agreement between the model output and CSO monitoring data for activation frequency for the 12-month post-construction monitoring period.

8. Once the city has satisfactorily re-calibrated the model in accordance with Steps 5 through 7 (or shown that re-calibration is not necessary in accordance with Step 4), the city will then utilize the original or recalibrated model (if re-calibration was necessary in accordance with Steps 4-7) to run a continuous simulation for the years 1996-2000 (or other representative five-year period agreed to by IDEM and USEPA) to determine whether the city has achieved the Performance Criteria set forth in Table 7-5.

9. The city shall be deemed to have achieved the Performance Criteria if the five-year simulation shows 97% or greater capture on the Fall Creek watershed and 95% or greater capture on the White River, Pogues Run, Pleasant Run and Eagle Creek watersheds; and that there were a total of 12 or fewer CSO events into the Fall Creek watershed and 24 or fewer CSO events into each of the four remaining watersheds for the five-year period. Otherwise, the city shall be deemed to have not achieved the Performance Criteria until the city runs a continuous simulation for the years 1996-2000 (or other representative five-year period agreed to by IDEM and USEPA) with a satisfactorily calibrated or re-calibrated model that demonstrates that both the percent capture and overflow frequency Performance Criteria have been achieved.

10. The overflow frequency performance criterion is based upon a "typical year," calculated using the 5-year continuous simulation of the collection system model, as described above. The CSO Control Measures will be designed to achieve 2 CSO events per "typical" year for the Fall Creek watershed and 4 CSO events per "typical" year for each of the other four watersheds. If the modeled overflow frequency for the five-year period exceeds 12 for the Fall Creek watershed and/or 24 for the four remaining watersheds, then the city may submit an analysis that will include: (1) the volume, frequency and factors causing the additional overflow frequency, (2) any impact on water quality, including designated uses, from the additional overflow frequency, (3) control options, if any, to reduce the frequency

toward 24/12 (as appropriate), (4) associated costs from any additional control options, (5) any expected benefits from such control options and (6) a recommendation as to whether additional control measures are necessary to protect designated uses.

11. The use of the five-year overflow occurrence numbers of 24 and 12, which equate to average annual overflow frequencies of 4.8 and 2.4, is appropriate due to the inherent 20 percent variability in model predictions.

One key performance criteria for the LTCP is percent capture. Percent capture is a U.S. EPA measure of the annual wet-weather sewage flow that is captured and treated before discharge. For example, "95 percent capture" means that the long-term control plan will capture 95 percent of the total volume of flow collected in the combined sewer system during wet-weather conditions on a system-wide, annual average basis (not 95 percent of the volume currently being discharged). On a system-wide basis, 95 percent capture is expected to equate to four storms causing overflow events in an average year. However, year-to-year variability in rainfall is such that some years may have more than four or less than four overflow events. The city wants to clearly inform people that "four overflow events per year" is a long-term average based upon typical rainfall, and not a calendar-year regulatory requirement. Based upon 54 years of historic rainfall data, some dry calendar years might have no storms causing overflow events while wet years would have as many as 10 overflow events for 95 percent capture and six overflow events for 97 percent capture. The predicted system performance for overflow frequency was shown previously in Figures 7-12 through 7-14. Figure 8-3 illustrates how percent capture will be measured.

The city also plans to use its hydraulic models to evaluate the effectiveness of LTCP controls and to fine tune planning and implementation of specific CSO control projects. This will allow the city to determine how various scenarios might affect evolving management and control strategies along Indianapolis streams.

## 8.5 Quality Control

Quality control procedures are in place and may be updated periodically to ensure consistent delivery of quality work and products for all activities included under the post-construction monitoring program. The quality control procedures include the following:

- Documentation of receiving streamflow monitoring and field measurement activities. Assurances that flow data generated are valid and representative, including streamflow discharge estimates.
- Documentation of CSO outfall monitoring activities including installation activities, calibration records, field-truthing equipment and maintenance, and data



# Post-Construction Monitoring Program

downloads. Assurances that flow data generated are valid and representative.

- Documentation of field sampling activities including sampling dates, times, sample identification numbers, equipment calibration, monitoring results, weather conditions, and any other pertinent observations in support of the sample collection. Completion of tracking forms, chain-of-custody forms and sampling equipment maintenance records.
- Documentation of laboratory analysis activities including sample checking, analytical methods and protocols, use of reference samples and duplicates, sample archiving, data verification and coding, equipment calibration and maintenance and data downloads.
- Documentation of rainfall monitoring activities including equipment calibration and maintenance records, precipitation records, and data downloads. Assurances that precipitation data generated are valid and representative.
- Documentation of data retrieval, management and analysis activities including data entry practices and data validation (e.g., entry range limits, duplicate entry checking), data tracking, data formatting, data analysis, and data reporting.
- Quality control reviews of all internal and external deliverables.

## 8.6 Data Evaluation and Progress Reporting

As noted earlier in Section 1, water quality in the White River basin is affected by sources other than combined sewer overflows. To ensure that public resources are spent responsibly, the long-term control plan is an integral part of a watershed-based strategy that considers all water pollution sources and the most cost-effective means of achieving water quality goals. The city is implementing several programs with a goal of improving water quality conditions, including the CSO long-term control plan, septic tank elimination program and stormwater management program. Implementation of these programs will result in measurable improvements to water quality.

The post-construction monitoring program will evaluate whether CSO controls are performing as designed and expected. It also will assess water quality conditions in CSO receiving streams to compare to baseline conditions described in Section 2. Because of the interconnected nature of the city's programs and waterways, water quality improvements may be attributable to more than one of the city's water quality improvement programs.

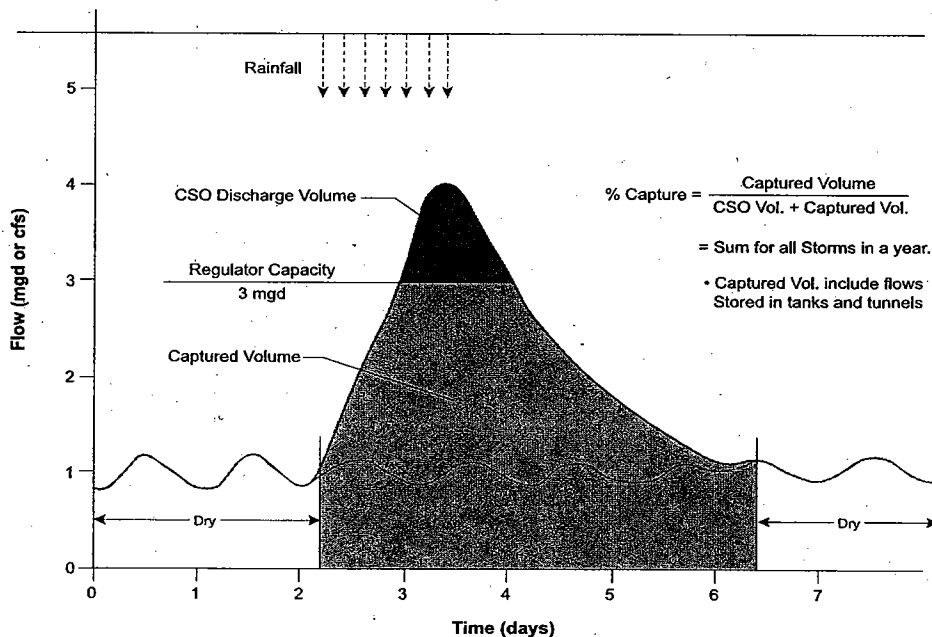


Figure 8-3  
Sample Percent Capture Hydrograph



# Post-Construction Monitoring Program

## 8.6.1 Milestone Reports

After Achievement of Full Operation of all LTCP projects in a specified watershed, the city will prepare and submit a report to the U.S. EPA and IDEM. The report for each watershed will be submitted within two years following Achievement of Full Operation of the applicable CSO project(s). The reports will include only the CSO measures implemented and data related to the following information:

- Description of stream section and CSO control being evaluated
- CSO Monitoring and Rainfall Monitoring Results
- Receiving Stream Monitoring Results
- Effluent Testing Results
- Water Quality Monitoring Results (including the extent to which the city's CSOs into that watershed are complying with water quality-based requirements of the city's NPDES permits)
- Evaluation of CSO Control Measures (including whether or not the measures meet the Performance Criteria specified in Table 7-5)
- Significant Variances and Impacting Factors (with regard to verification of level of control and water quality impacts)
- Re-Evaluation and Corrective Actions (if necessary)
- Status of CSO Control Measures (reporting on the status of construction schedule, and so on)

Within five years following Achievement of Full Operation of all LTCP projects, the city shall submit a final Post-Construction Monitoring Report to U.S. EPA and IDEM, containing the information described above with respect to each watershed, plus additional information relevant to those matters that Indianapolis is aware of that has become available subsequent to completion of the watershed reports. The purpose of the Final Post-Construction Monitoring Report shall be to document how well the city's entire combined sewer system is performing as a whole, following completion of all LTCP projects, and shall include an assessment of whether the improvements are meeting Performance Criteria, and whether the city's CSO discharges are complying with the water-quality based requirements of the city's NPDES permits.

The reports will identify deficiencies or performance limiting factors in system design, process, operations, and/or maintenance that may limit the overall effectiveness of the CSO control measures in achieving their intended performance. Necessary corrective measures will be documented. The city will evaluate alternative operating strategies for the implemented controls prior to considering structural modifications. If improvements or additional facilities and processes are needed to meet applicable requirements, the city will identify them in the report.

## 8.6.2 Progress Reports to Public

The city will prepare periodic public progress reports describing progress in the design, construction, and effectiveness of water quality improvement projects. These reports will be designed to provide information to Indianapolis residents on water quality improvements and the benefits gained by controlling CSOs, sewerage unsewered areas, and implementing stormwater best management practices. The reports will be available on the city's Web site and to the news media, interested organizations, and in meetings with interested parties. The city also will continue its public notification and education program, which is described in Section 5.

## 8.7 Summary

The city's post-construction monitoring program will determine the effectiveness of the CSO control program in achieving performance requirements and water quality goals. The program includes the following elements:

- Activities to determine whether CSO control measures are meeting Performance Criteria;
- Measures to assess the environmental benefits attributable to CSO control measures and other water quality improvements, and to determine whether the city's CSO discharges are complying with the water quality-based requirements of the applicable NPDES permit;
- A monitoring schedule, monitoring locations, and associated monitoring procedures to collect data related to the Performance Criteria; and
- Evaluation and analysis of the monitoring data to determine whether CSO control measures are achieving the desired results and for reporting progress to regulatory agencies and the public.

The city's post-construction monitoring program addresses U.S. EPA and IDEM requirements for monitoring the performance of CSO control measures. The city will use the Performance Criteria in Table 7-5 as performance measures to gauge the effectiveness of long-term CSO control measures. The city will use its existing river monitoring network and locations to measure streamflow and water stage, continuous DO, water temperature, treatment plant effluent discharge, CSO activation and CSO flow. In addition, the city may, at its discretion, continue its monthly in-stream water quality sampling program for a variety of parameters. The city will submit milestone reports to the U.S. EPA and IDEM, as required, following completion of construction of all LTCP projects in a watershed. In addition, the city will prepare public reports describing progress in the design, construction, and effectiveness of water quality improvement projects. The city also will continue to implement its program to educate citizens on water quality issues and notify them of actual or impending CSO occurrences.



**EXHIBIT 3**

SSD Control Measure <sup>1</sup>	Asset ID	Current Capacity-Related SSD Location of Event <sup>2</sup>	Control Measure Description	Estimated Cost	Critical Milestones <sup>3</sup>	Latitude			Longitude		
						Deg	Min	Sec	Deg	Min	Sec
1	LS 405	6514 CREEKSIDE LN	Lift station replacement with gravity sewers, lift station upgrades, inflow and infiltration reduction.	\$4,240,000	Bid Year – 2006 Achievement of Full Operation – 2008	42	7	25	86	42	4
2	LS 403	7002 FALL CREEK RD	Lift station replacement with gravity sewers, lift station upgrades, inflow and infiltration reduction.	\$1,870,000	Bid Year – 2006 Achievement of Full Operation – 2008	42	6	58	86	41	32
3	LS 115	8440 WOODBURN DR	Extension of force main and lift station upgrade.	\$1,900,000	Bid Year – 2006 Achievement of Full Operation – 2008	42	2	39	86	57	52
4	410414	8421 ROYAL MEADOW	Sewer rehabilitation, inflow and infiltration reduction.	\$900,000	Bid Year – 2007 Achievement of Full Operation – 2009	41	53	26	86	49	33
5	410441	926 W RALSTON RD	Lift station upgrades.	\$2,090,000	Bid Year – 2007 Achievement of Full Operation – 2009	41	53	17	86	49	32
6	460002	10802 E TROY AVE	Local interceptor improvements, lift station upgrades, inflow and infiltration reduction.	\$19,400,000	Bid Year – 2008 Achievement of Full Operation – 2015	41	58	28	86	36	54
7	130049	7601 BROOKVIEW LN	Relief Interceptor adjacent to the existing Castleton Interceptor alignment.	\$20,000,000	Bid Year – 2010 Achievement of Full Operation – 2013	42	8	22	86	43	37
<b>Total Cost</b>				<b>\$50,400,000</b>							

<sup>1</sup> For all SSD Control Measures, the design criteria is that sanitary sewers and lift stations will be designed in accordance with Indianapolis Sanitary Standards and Ten State Standards. The performance criteria is Consistent Operation: Performs as designed on a regular basis. Failure to perform correctly is infrequent. The consistent operation will address the current capacity-related Capacity-related SSD events occur currently at seven (7) locations. The listed projects address the observed capacity-related SSDs. These seven (7) locations had an average of one or more reported wet-weather, capacity-related SSD event per year over the 2002-2005 reporting period that discharged to the Waters of the US/State.

<sup>2</sup> For Critical Milestones, the term "Bid Year" refers to the completion of the bidding process.

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

UNITED STATES OF AMERICA, )  
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THE STATE OF INDIANA, )  
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Plaintiffs, )  
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v. )  
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THE CITY OF INDIANAPOLIS, )  
INDIANA, A Municipal )  
Corporation, )  
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Defendant. )  
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CONSENT DECREE

EXHIBIT 4

STATE SUPPLEMENTAL ENVIRONMENTAL PROJECT



**EXHIBIT 4**  
**CITY OF INDIANAPOLIS, INDIANA**  
**STATE SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**

**OVERVIEW**

**Indianapolis Sanitary Sewer System**

The City of Indianapolis' (City's) wastewater collection and treatment system serves a population of approximately 800,000 residents and 41,000 businesses, and is comprised of approximately 250 miles of sanitary interceptor sewers. The center portion of the City is served by a combined sewer system and separate sanitary sewers serve the outlying areas.

The City owns two advanced wastewater treatment plants (AWTs), the Belmont AWT and the Southport AWT. Both are operated and maintained by United Water under contract to the City, and are currently rated for 120 million gallons per day (mgd) average treatment capacity and 125 mgd average treatment capacity, respectively.

**The City's Supplemental Environmental Project (SEP)**

This document describes the SEP that the City will undertake for the purposes of offsetting the State portion of a civil penalty.

**SEP: BANTA/SOUTHPORT STEP PROJECT**

**Septic Tank Elimination Program (STEP)**

Some 30,000 homes in Marion County are served by private septic systems, with 18,000 of those homes being classified as high priority to receive sewer systems because their systems are failing or near failure. Septic systems have a limited life and eventually fail, leaching human waste into groundwater, back yards, and/or ditches and streams. Septic systems at times can be linked to high *E. coli* bacteria counts in many small neighborhood streams and ditches during dry weather, when children are most likely to play in them.

In the past, the City has used the State of Indiana's Barrett Law process to require homeowners to share the cost to construct sewers in neighborhoods on septic systems. This has caused hardships for many homeowners, especially low-income residents and the elderly on fixed incomes. Projects often have faced public opposition and progress on septic tank conversion projects has slowed as a result. To address the pollution caused by failing septic systems more effectively and quickly, the City of Indianapolis and Marion County City-County Council (Council) initiated the Septic Tank Elimination Program (STEP) to eliminate the need to use the Barrett Law as the financing mechanism for septic conversion projects. Funding for the public infrastructure portions of STEP projects will be provided by sanitary sewer rates. Individual property owners will be responsible for costs associated with their private lateral, connection fee to the city sewer and septic tank closure. Each STEP project will be implemented through the

City Capital Improvement Plan, beginning with facility planning, engineering design, public bidding for construction contractor, and project construction. The city actively works with neighborhood associations and conducts public meetings for each STEP project to ensure that the affected public are fully informed and can participate in the project. Public information meetings will be conducted at each of the stages listed above, and a continued public communication process will be used during construction.

### **Project Purpose**

The STEP SEP will reduce stream bacteriological impairment impacts, drainage complaints, and possible impacts to residential drinking water wells. The STEP project will also eliminate the impact of these failing septic systems on both public health and the environment in these areas by providing a more effective alternative for sewage disposal. Those impacts, especially bacteriological, are suspected to cause or contribute to numerous dry weather days where adjacent streams do not meet bacteria standards. These projects are supported by Marion County Health and Hospital and/or resident petitions. In addition, EPA cites failing septic systems as an area of concern. According to EPA's website (<http://cfpub.epa.gov/owm/septic/home.cfm>), "Poorly managed systems have been named as a concern by nearly every federal and state program that deals with water resource issues. According to various reports and studies, an estimated 10% to 20% of septic systems fail each year." The City's STEP is a critical component of its overall water quality program.

### **Project Scope, Schedule and Cost**

The Banta/Southport project (Project BL-46-004D) is located in the Little Buck Creek watershed in Perry Township, in the far south-central portion of Marion County. This project ranks 16<sup>th</sup> of 140 STEP projects. It will capture approximately 1.5 million gallons of residential sanitary sewage per month from approximately 159 homes that currently have a septic failure rate of about 73%. The flow will be conveyed for treatment through approximately 11,500 feet of new collector sewer pipe, which will be connected by the construction project to a 42" existing interceptor. This project will be completed by December 31, 2010, at a cumulative cost of approximately \$1.51 million.

**Figure 1** shows the location and project area.

### **Progress Reports**

The City shall submit to IDEM progress reports on implementation of the listed STEP project with each six-month report required under Section XI of the Consent Decree. Each progress report shall provide the status of the STEP project identified above, with detailed information about any such projects that were completed during the reporting period.

### **Modification/Substitution of Projects**

The City may substitute a similar project for the project identified above or may modify the project upon advance written approval by IDEM. Such approval shall not be unreasonably withheld.

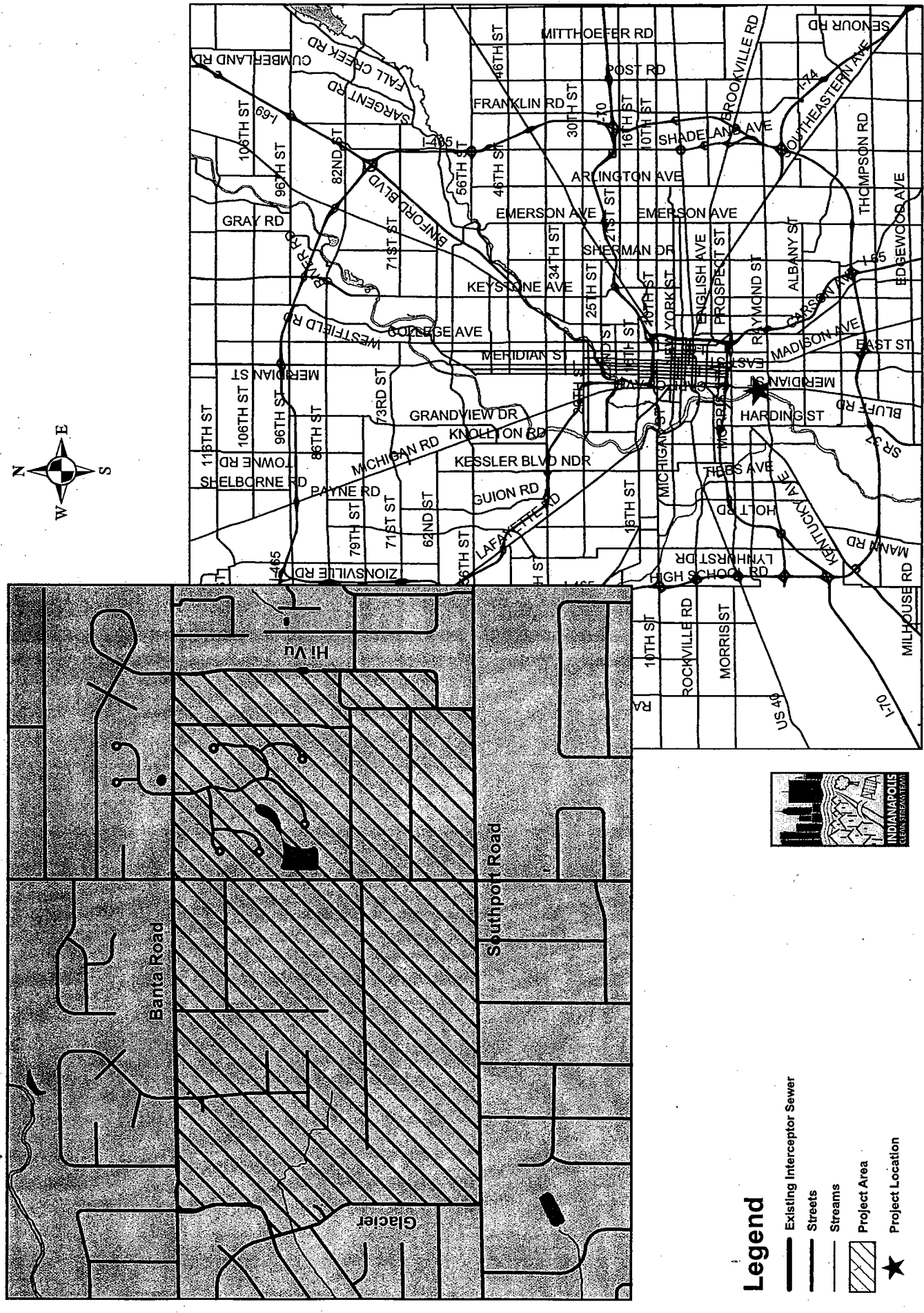
### **Substantial Compliance**

The City will be in compliance with this SEP requirement as long as it spends at least \$1.51 million toward the project identified above by the final completion date of December 31, 2010, and documents such expenditures in the SEP Completion Report required below.

### **SEP Completion Report**

Within 120 days after (1) completion of the STEP project identified above or (2) the expenditure of at least \$1.51 million dollars toward the same, the City shall submit to IDEM a final SEP Completion Report documenting the expenditures and the STEP project that were completed. Upon IDEM's written acceptance of this report, the City shall be deemed to have completed this SEP requirement.

# Figure 1: Banta / Southport Project Boundary



## **EXHIBIT 5**

### **CITY OF INDIANAPOLIS, INDIANA SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**

#### **OVERVIEW**

##### **Indianapolis Sanitary Sewer System**

The City of Indianapolis' (City's) wastewater collection and treatment system serves a population of approximately 800,000 residents and 41,000 businesses, and is comprised of approximately 250 miles of sanitary interceptor sewers. The center portion of the City is served by a combined sewer system and separate sanitary sewers serve the outlying areas.

The City owns two advanced wastewater treatment plants (AWTs), the Belmont AWT and the Southport AWT. Both are operated and maintained by United Water under contract to the City, and are currently rated for 120 million gallons per day (mgd) average treatment capacity and 125 mgd average treatment capacity, respectively.

While the City has advanced its CSO control program ahead of almost all other CSO communities in Indiana, the solutions required in the Consent Decree will take twenty years to implement. In trying to improve water quality and protect public health in Marion County, the City has taken a watershed approach toward identifying water quality impairments that could impact public health or aquatic life. Through this watershed approach, the City has identified several significant non-combined sewer overflow-related pollution sources that pose risks to public health and aquatic life in the CSO receiving streams.

For aquatic life protection, the City has proposed in its CSO Long-Term Control Plan to augment flows in several streams during low-flow conditions as a way to improve low instream dissolved oxygen levels.

The City proposes to perform a SEP focused on adding protection to public health in some or all of the CSO watersheds (White River, Fall Creek, Pogues Run, Eagle Creek, and Pleasant Run). On the public health side, the streams of concern experience elevated levels of bacteria during the summer recreation season. These dry weather bacteria levels are not related to CSO discharges. Instead, they are caused by the City's unusually high number of urban septic systems near these waters as well as other upstream pollution sources.

The city's SEP will be a \$2 million investment in high-priority septic tank conversion projects.

## **SEPTIC TANK ELIMINATION PROGRAM (STEP)**

Approximately 30,000 homes in Marion County are served by private septic systems, with 18,000 of those homes being classified as high priority to receive sewer systems because their septic systems are failing or near failure. Septic systems have a limited life and eventually fail, leaching human waste into groundwater, back yards, and/or ditches and streams. Septic systems at times can be linked to high *E. coli* bacteria counts in many small neighborhood streams and ditches during dry weather, when children are most likely to play in them.

In the past, the City has used the State of Indiana's Barrett Law process to require homeowners to share the cost to construct sewers in neighborhoods on septic systems. This has caused hardships for many homeowners, especially low-income residents and the elderly on fixed incomes. Projects often have faced public opposition and progress on septic tank conversion projects has slowed as a result. To address the pollution caused by failing septic systems more effectively and quickly, the City of Indianapolis and Marion County City-County Council (Council) initiated the Septic Tank Elimination Program (STEP) to eliminate the need to use the Barrett Law as the financing mechanism for septic conversion projects. Funding for the public infrastructure portions of STEP projects will be provided by sanitary sewer rates. Individual property owners will be responsible for costs associated with their private lateral, connection fee to the city sewer and septic tank closure. Each STEP project will be implemented through the City Capital Improvement Plan, beginning with facility planning, engineering design, public bidding for a construction contractor and project construction. The city actively works with neighborhood associations and conducts public meetings for each STEP project to ensure that the affected public are fully informed and can participate in the project. Public information meetings will be conducted at each of the stages listed above, and a continued public communication process will be maintained during construction.

### **Project Purpose**

The STEP aspect of the integrated SEP will reduce stream bacteriological impairment impacts, drainage complaints, and possible impacts to residential drinking water wells. The STEP project will also eliminate the impact of these failing septic systems on both public health and the environment in these areas by providing a more effective alternative for sewage disposal. Those impacts, especially bacteriological, are suspected to cause or contribute to numerous dry weather days where adjacent streams do not meet bacteria standards. These projects are supported by the Marion County Health and Hospital and/or resident petitions. In addition, EPA cites failing septic systems as a major area of concern. According to EPA's website (<http://cfpub.epa.gov/owm/septic/home.cfm>), "Poorly managed systems have been named as a concern by nearly every federal and state program that deals with water resource issues. According to various reports and studies, an estimated 10% to 20% of septic systems fail each year." The City's STEP is a critical component of its overall public health and water quality programs.

## **Project Scopes, Schedules & Costs**

The Epler/Meridian STEP project (Project BL-46-004C) is located in the White River South watershed in Perry Township, in the far south-central portion of Marion County. This project ranks 9<sup>th</sup> out of 140 STEP projects. It will capture approximately 2 million gallons of residential sanitary sewage per month from approximately 180 homes that currently have a septic failure rate of about 39%. The flow will be conveyed for treatment through approximately 10,700 feet of new collector sewer pipe, which will be connected by the construction project to an existing 42" interceptor. This project will be completed by December 31, 2010 at a cumulative cost of approximately \$2 million.

Figure 2 shows the location and project area.

## **THE STEP IS CONSISTENT WITH EPA'S SEP POLICY**

EPA's SEP policy (May 1, 1998), seeks to encourage and obtain environmental and public health protection and improvements that would not otherwise occur without the Policy. EPA "encourages the use of SEPs that are consistent with" its Policy because SEPs play a role in securing significant environmental or public health protection and improvements. EPA also notes that SEPs may be particularly appropriate "to achieve other policy goals, including promoting pollution prevention and environmental justice."

For the reasons laid out in the detailed SEP description above, the City's proposed SEP is consistent with EPA's Policy. Notably:

- There is a direct relationship between the underlying consent decree concerns (combined and sanitary sewer discharges and stream water quality to protect public health) and the human health and environmental benefits that will result from the SEP. Clearly, the STEP projects will improve water quality and result in less human-caused bacteria in the streams.
- The SEP protects public health and reduces risks to public health and the environment.
- The City is not legally obligated to implement the STEP.

## **ADMINISTRATIVE PROVISIONS**

### **Progress Reports**

The City will submit to U.S. EPA and IDEM progress reports on implementation of the SEP project along with each six-month report required under Section X of the Consent Decree. Each progress report will provide the status of the STEP and Water Park components identified above, and provide detailed information about any such projects that were completed during the reporting period.

**Modification/Substitution of Projects**

The City may substitute a similar project for the STEP or Water Park project components identified above or may modify the project with advance written approval by IDEM and U.S. EPA. Such approval shall not be unreasonably withheld for alternative projects that are consistent with EPA's SEP Policy.

**Substantial Compliance**

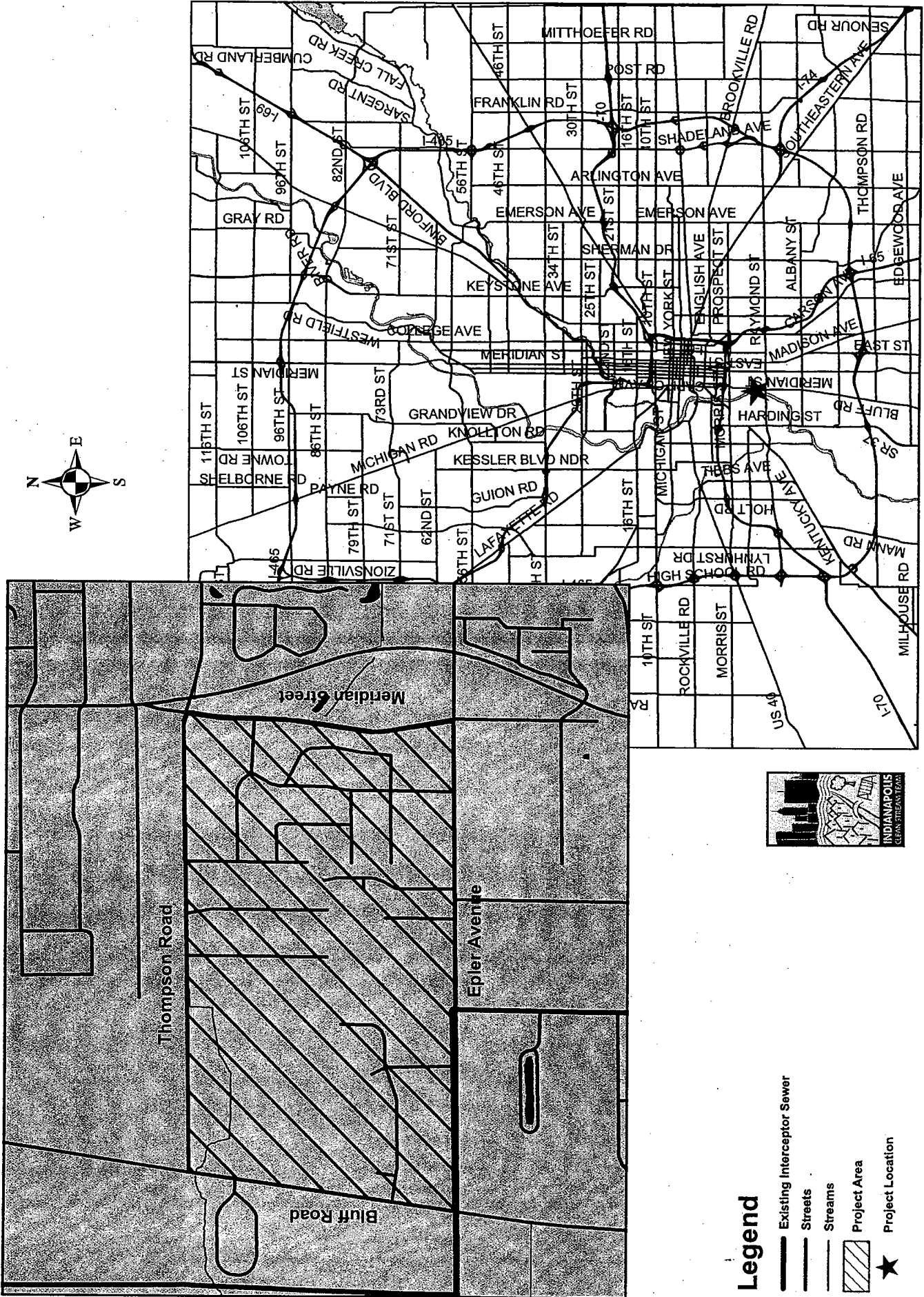
The City will be in compliance with this SEP requirement as long as it spends at least \$2 million toward the STEP by the final completion date of December 31, 2010, and documents such expenditures in the SEP Completion Report required below.

**SEP Completion Report**

Within 120 days after (1) completion of the STEP, or (2) the expenditure of at least \$2 million toward the same, the City shall submit to U.S. EPA and IDEM a final SEP Completion Report documenting the expenditures and the STEP projects completed. Upon U.S. EPA's and IDEM's written acceptance of this report, the City shall be deemed to have completed this SEP requirement.



**Figure 2: Epler / Meridian Project Boundary**



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

UNITED STATES OF AMERICA, )  
 )  
and )  
 )  
THE STATE OF INDIANA, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
THE CITY OF INDIANAPOLIS, )  
INDIANA, A Municipal )  
Corporation, )  
 )  
Defendant. )  
\_\_\_\_\_ )

CONSENT DECREE

EXHIBIT 6

LONG TERM CONTROL PLAN