

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No: 7:13-cv-144-BO

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF WILMINGTON,
NEW HANOVER COUNTY, AND
CAPE FEAR PUBLIC UTILITY
AUTHORITY

Defendants,

THE STATE OF
NORTH CAROLINA,

Necessary Party required by
33 U.S.C § 1319(e)

Civil Action No. _____

CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America (“United States”), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint (the “Complaint”) concurrently with the lodging of this Consent Decree alleging that Defendants (the City of Wilmington, North Carolina (the “City”); New Hanover County, North Carolina (the “County”); and Cape Fear Public Utility Authority (the “Authority”)) have experienced a number of sanitary sewer overflows (“SSOs”) that the EPA contends are violations of Section 301 of the Clean Water Act, 33 U.S.C. § 1311 (“CWA”), and certain terms and conditions of its applicable National Pollutant Discharge Elimination System (“NPDES”) permits issued under Section 402 of the CWA, 33 U.S.C. § 1342;

WHEREAS, the State of North Carolina (the “State”) was named as a necessary party in the Complaint and is joined as a necessary party to this Consent Decree under Section 309(e) of the CWA, 33 U.S.C. § 1319(e), which requires the state in which a municipality is located to be joined as a party whenever the municipality is a party to a civil action brought by the United States under Section 309 of the CWA and which further provides that “[s]uch state shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against the municipality in such action to the extent that the laws of that [s]tate prevent the municipality from raising revenues needed to comply with such judgment.”;

WHEREAS, the State has been authorized by EPA to administer the NPDES program pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b);

WHEREAS, each of the Defendants is a “municipality” pursuant to Section 502 of the CWA, 33 U.S.C. § 1362;

WHEREAS, the City owned and operated certain municipal wastewater collection, retention and transmission systems which are designed to collect and convey municipal sewage (domestic, commercial and industrial) to its former M'Kean Maffitt Wastewater Treatment Plant (the "Southside WWTP") and its former James A. Loughlin Wastewater Treatment Plant (the "Northside WWTP") until such municipal wastewater collection, retention and transmission systems and WWTPs were conveyed to the Authority on July 1, 2008;

WHEREAS, the County owned and operated certain municipal wastewater collection, retention and transmission systems which are designed to collect and convey municipal sewage (domestic, commercial and industrial) to its former Walnut Hills Subdivision Wastewater Treatment Plant (the "Walnut Hills WWTP") and to the Southside and Northside WWTPs until such municipal wastewater collection, retention and transmission systems and WWTPs were conveyed to the Authority on July 1, 2008;

WHEREAS, the New Hanover County Water and Sewer District (the "District") owned and operated certain municipal wastewater collection, retention and transmission systems which are designed to collect and convey municipal sewage (domestic, commercial and industrial) to the Southside WWTP, the Northside WWTP and the Walnut Hills WWTP until such municipal wastewater collection, retention and transmission systems and WWTPs were conveyed to the Authority on July 1, 2008;

WHEREAS, the Authority is now the owner and operator of the municipal wastewater collection, retention and transmission systems and WWTPs (the "Sewer System") formerly owned and operated by the City, the County and/or the District;

WHEREAS, the Authority now operates the Southside WWTP, the Northside WWTP and the Walnut Hills WWTP pursuant to NPDES permits issued by the State and numbered NC0023973, NC0023965, and NC0039527, respectively (collectively referred to as the "NPDES Permits");

WHEREAS, the State's Department of Environment and Natural Resources ("DENR") reviewed and fined the City and the County for a number of SSOs prior to September 14, 2007 and entered into a Special Order by Consent ("SOC") with the City that became effective September 14, 2007 that required the City to implement flow control associated with the Northeast Interceptor and set forth a series of actions that had to be undertaken within the collection system. On March 12, 2008, DENR recommended that the SOC be terminated because the activities associated with the SOC had been accomplished.

WHEREAS, this Consent Decree requires the Defendants through the actions of the Authority to develop, submit, finalize, and implement certain additional plans for the continued improvement of its Sewer System;

WHEREAS, the City contends that it had a goal to create a plan of action for ongoing collection system rehabilitation and maintenance and to develop a recommended capital improvement plan for wastewater collection system projects and subsequently completed a Sanitary Sewer Condition Assessment Project in 2007. The City and the Authority contend that they have since used this program to guide the identification and prioritization of rehabilitation needs, and the Authority contends it has implemented a "find it-fix it" approach that combines inspection, repair and rehabilitation activities to prioritized areas;

WHEREAS, the City and the Authority in response to EPA and DENR enforcement efforts developed, implemented and completed numerous capital improvement projects within the Sewer System to address SSOs as more particularly described on Appendix A, attached hereto and incorporated herein;

WHEREAS, the City also voluntarily developed and submitted a Management, Operation, and Maintenance (“MOM”) evaluation in 2006 using EPA Guidance documents and the Authority has subsequently, in 2010, expanded the program to a Capacity, Management, Operations, and Maintenance (“CMOM”) evaluation and to include portions of the Sewer System that was previously owned and operated by the County and the District and is currently updating it to include the 2012 status of CMOM programs and activities;

WHEREAS, the Plaintiff and the Defendants to this Consent Decree have negotiated in good faith and have reached a settlement of the issues raised in the Complaint;

WHEREAS, the Defendants’ agreement to this Consent Decree is not an admission of liability, and except for the Defendants’ consent to jurisdiction and venue as provided in Section I of this Consent Decree, nor is it an adjudication or admission of any fact or law;

WHEREAS, the Plaintiff and the Defendants recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Plaintiff and the Defendants in good faith and will avoid litigation between the Plaintiff and the Defendants and that this Consent Decree is fair, reasonable, and in the public interest;

NOW THEREFORE, with the consent of the Plaintiff and the Defendants, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. Venue is proper in the Eastern District of North Carolina pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Consent Decree, or any action to enforce this Consent Decree, the Defendants consent to the Court's jurisdiction over this Consent Decree and any such action and over the Defendants and consent to venue in this judicial district.

II. APPLICABILITY

2. The obligations of this Consent Decree apply to and are binding upon the United States, the State (to the extent that its laws prevent the Defendants from raising revenues needed to comply with this Consent Decree as set forth in Section 309(e) of the CWA, 33 USC § 1319 (e)), and upon the Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

3. No transfer of ownership or operation of the Sewer System, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the Defendants of its obligation to ensure that the terms of this Consent Decree are implemented. At least thirty (30) Days prior to such transfer, the Authority shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA and the United States Department of Justice, in accordance with Section XV of this Consent Decree (Notices). The

Authority shall require, as a condition of any sale or transfer, that the purchaser or transferee agrees in writing to be bound by this Consent Decree and submit to the jurisdiction of the Court for its enforcement. Any attempt to transfer ownership or operation of the Sewer System without complying with this Paragraph constitutes a violation of this Consent Decree.

4. The Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. The Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, the Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

6. 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 the Sewer System to achieve and maintain the goals of (1) full compliance with the CWA and the NPDES Permits and (2) the elimination of all SSOs.

IV. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the CWA, 33 U.S.C. §§ 1251 *et seq.*, and regulations promulgated under the CWA, unless otherwise provided

in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- (a). The "Authority" shall mean the Cape Fear Public Utility Authority, including all of its departments, agencies, instrumentalities, and any successor thereto.
- (b). "Building Backup" shall mean a wastewater release or backup into a building that is caused by blockages, flow conditions, or other malfunctions in the Authority's WCTS. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a Private Lateral or other piping/conveyance system that is not owned by the Authority is not a Building Backup.
- (c). "Certification" or "Certify" when used in this Consent Decree shall require the Defendants to comply with Paragraph 14 of this Consent Decree.
- (d). "City" shall mean the City of Wilmington, North Carolina, including all of its departments, agencies, instrumentalities, and any successor thereto.
- (e). "CMOM" or "Capacity, Management, Operations, and Maintenance" shall mean a program of accepted industry practices to properly manage, operate and maintain sanitary wastewater collection, transmission and treatment systems, investigate capacity-constrained areas of these systems, and respond to SSO events.
- (f). "Complaint" shall mean the complaint filed by the United States in this action.
- (g). "Consent Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXIV.). In the event of a conflict between this document and any appendix, this document shall control.

(h). "County" shall mean New Hanover County, North Carolina, including all of its departments, agencies, instrumentalities, and any successor thereto.

(j). "CWA" shall mean the Clean Water Act, as amended, 33 U.S.C. §§ 1251, *et seq.*

(k). "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Eastern District of North Carolina.

(l). "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

(m). "Defendants" shall mean the City, the County, the Authority, and/or any successors thereto.

(n). "Deliverable" shall mean any written document required to be prepared and/or submitted by or on behalf of the Defendants pursuant to this Consent Decree.

(o). "District" shall mean the New Hanover County Water and Sewer District, including all of its departments, agencies, instrumentalities, and any successor thereto.

(p). "DOJ" shall mean the United States Department of Justice.

(q). "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

(r). "Effective Date" shall have the definition provided in Section XVI.

(s). "Force Main" shall mean any pipe that receives and conveys, under pressure, wastewater from the discharge side of a pump. A Force Main is intended to convey wastewater under pressure.

(t). "Gravity Sewer Line" or "Gravity Sewer" shall mean a pipe that receives, contains and conveys wastewater not normally under pressure, but is intended to flow unassisted under the influence of gravity.

(u). "Infiltration" as defined by 40 C.F.R. § 35.2005(b)(20) shall mean water other than wastewater that enters the WCTS (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes.

(v). "Inflow" as defined by 40 C.F.R. § 35.2005(b)(21) shall mean water other than wastewater that enters the WCTS (including sewer service connections) from un-metered sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm water, surface runoff, street wash waters, or drainage.

(w). "I/I" shall mean the total quantity of water from inflow, infiltration, and rainfall induced inflow and infiltration without distinguishing the source.

(x). "Month" shall mean shall mean one calendar month running from the numbered day to the same numbered day of the following calendar month, regardless of whether the particular month has 28, 29, 30 or 31 days. In the event a triggered event would occur on a

day of the month which does not exist (for example, on February 30), then the event shall be due on the first day of the following month (for example, March 1).

(y). "NPDES" shall mean the National Pollutant Discharge Elimination System authorized under Section 402 of the CWA, 33 U.S.C. § 1342.

(z). "NPDES Permit(s)" shall mean NPDES permits issued to the Authority by the State pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the M'Kean Maffitt Wastewater Treatment Plant (the "Southside WWTP"), the James A. Loughlin Wastewater Treatment Plant (the "Northside WWTP"), and the Walnut Hills subdivision Wastewater Treatment Plant (the "Walnut Hills WWTP"), numbered NC0023973, NC0023965, and NC0039527, respectively, and any future extended, modified, or reissued permits.

(aa). "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral.

(bb). "Parties" shall mean the United States of America on behalf of EPA, the City, the County, the Authority, and the State.

(cc). "Plaintiff" shall mean the United States of America on behalf of EPA.

(dd). "Private Lateral" shall mean that portion of a sanitary sewer conveyance pipe that extends from the wastewater tap to the single-family, multi-family, apartment, or other dwelling unit or commercial or industrial structure to which wastewater service is or has been provided.

(ee). "Pump Station" shall mean facilities comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that pump station.

(ff). "Sanitary Sewer Overflow" or "SSO" shall mean any discharge of wastewater to waters of the United States from the Authority's WCTS through a point source not permitted in any NPDES permit, as well as any overflow, spill, or release of wastewater to public or private property from the WCTS that may not have reached waters of the United States, including all Building Backups.

(gg). "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

(hh). "Sewer System" shall mean the WCTS and the WWTPs.

(ii). "State" shall mean the State of North Carolina, including all of its departments, agencies, and instrumentalities

(jj). "Subparagraph" shall mean a portion of a paragraph identified by lowercase letters.

(kk). "Timely" when applied to the submittal of a Deliverable shall mean submitted no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and containing all of the elements pertaining to the submittal as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree). "Timely," when applied to the implementation of any Work shall mean implemented no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and in accordance with the elements pertaining to such Work as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree).

(ll). "United States" shall mean the United States of America, acting on behalf of EPA, including its departments, agencies, and instrumentalities.

(mm). "Wastewater Collection and Transmission System" or "WCTS" shall mean the wastewater collection, retention, and transmission systems, including all pipes, Force Mains, Gravity Sewer Lines, Pump Stations, manholes and appurtenances thereto, owned or operated by the Authority designed to collect and convey municipal sewage (domestic, commercial and industrial) to the Authority's WWTPs, including, without limitation, all wastewater collection, retention, and transmission systems and WWTPs formerly owned and operated by the City, the County and/or the District and which were conveyed by such entities to the Authority on July 1, 2008.

(nn). "Wastewater Treatment Plant" or "WWTP" shall mean devices or systems used in the storage, treatment, recycling, and reclamation of municipal wastewater. For purposes of this Consent Decree, this definition shall include all facilities owned, managed, operated, and maintained by the Authority, including but not limited to the Southside WWTP, the Northside WWTP and the Walnut Hills WWTP, and all components of those plants.

(oo). "Work" shall mean all activities the Defendants are required to perform under this Consent Decree.

V. REVIEW, APPROVAL AND IMPLEMENTATION OF DELIVERABLES

8. EPA Action on Deliverables. After review of any Deliverable that is required to be submitted by the Authority pursuant to this Consent Decree, EPA shall in writing:

- (a). approve the submission;
- (b). approve part of the submission and disapprove the remainder; or
- (c). disapprove the submission.

9. Approved Deliverables. If a Deliverable is approved by EPA pursuant to Subparagraph 8.(a)., the Authority shall take all actions required by the Deliverable in accordance with the schedules and requirements of the Deliverable as approved. If the Deliverable is approved only in part pursuant to Subparagraph 8.(b)., the Authority shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA, determines are technically severable from any disapproved portions, subject to the Authority's right to dispute only the specified conditions or the disapproved portions, under Section XI of this Consent Decree (Dispute Resolution). Following EPA approval of any Deliverable or portion thereof, such Deliverable or portion thereof so approved shall be incorporated into and become enforceable under this Consent Decree.

10. Disapproved Deliverables. If the Deliverable is disapproved in whole or in part pursuant to Subparagraph 8.(b). or (c)., the Authority shall, within thirty (30) Days or such other time as EPA and the Authority agree to in writing, correct all deficiencies and resubmit to EPA the Deliverable, or disapproved portion thereof, for approval, in accordance with Paragraph 8. If the resubmission is approved in whole or in part, the Authority shall proceed in accordance with Paragraph 9.

11. Stipulated Penalties Accruing. Any stipulated penalties applicable to the original Deliverable, as provided in Section IX of this Consent Decree, shall accrue during the thirty (30)-Day period or other specified period, but shall not be payable unless the resubmitted Deliverable is not Timely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the Authority's obligations under this Consent

Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

12. Timing of Review of Deliverables. EPA agrees to use best efforts to expeditiously review and comment on Deliverables. If EPA issues written comments and decisions on the Deliverables more than one-hundred and twenty (120) Days after receipt of such submission, any subsequent deadline or milestone that is dependent upon such comments or decisions shall be extended. The length of the extension shall be determined by calculating the number of Days between EPA's receipt of the submission and the date of EPA's written response, less one-hundred and twenty (120) Days. Within thirty (30) Days of the date that the Authority knows or should know of a deadline or milestone that the Authority believes is extended under this Paragraph, the Authority shall inform EPA, in writing, of its belief and the amount of time the Authority believes the deadlines or milestones are extended. If EPA disagrees with the Authority's determination that a deadline is dependent upon such comments or decisions, EPA shall inform the Authority in writing. The Authority may dispute EPA's conclusion regarding whether a deadline is dependent upon such comments or decisions pursuant to Section XI (Dispute Resolution).

13. Revisions to Deliverables. The Plaintiff recognizes that the Authority may need or want to revise certain Deliverables during the term of this Consent Decree. Such revisions shall not be considered modifications to the Consent Decree for purposes of Section XVIII (Modification). The Authority must obtain EPA's prior written approval of any revision to the substance of a Deliverable.

14. Certification. All Deliverables, notices, documents or reports submitted to the United States and EPA pursuant to this Consent Decree by a Defendant, shall, by a senior management official of that Defendant, be signed and certified as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such 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.

VI. COMPLIANCE REQUIREMENTS

15. Obligation to Perform Work. Upon the Effective Date of this Consent Decree, the Authority shall implement the Work pursuant to this Section of the Consent Decree. The Authority is responsible for ensuring that any contractors hired to perform Work pursuant to this Section of the Consent Decree comply with all applicable laws and with this Consent Decree. All Work shall be performed using sound engineering practices, which may include appropriate provisions of the *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; and *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 1994.

16. Specific CMOM Program Development. The Authority shall develop and implement the specific CMOM programs for the WCTS as provided below. All CMOM

programs shall be developed in accordance with EPA Region IV guidance, as set forth in the CDROM disk attached hereto as Appendix B. The Authority shall ensure that each CMOM program has written, defined purpose(s); written, defined goal(s); is documented in writing with specific details; is implemented by well trained personnel; has established performance measures; and has written procedures for periodic review.

(a). Inter-Jurisdictional Agreement Program. Within six (6) Months after the Effective Date of the Consent Decree, the Authority shall submit to EPA for review and approval an Inter-Jurisdictional Agreement Program, including a schedule for full implementation of the program, for when the Authority renews existing agreements or enters into new agreements that cover the collection, conveyance, and treatment of sewage by the Authority from other municipal satellite sewer systems. The Inter-Jurisdictional Agreement Program shall include, at a minimum, the following components:

i. A delineation of the minimum provisions to be set forth in these inter-jurisdictional agreements with which the contracting municipality must comply. Such provisions shall include, but not be limited to, the following:

(A) Requirements on the contracting party to properly manage, operate, and maintain its sewage collection and conveyance systems so as to minimize peak flows into the Authority's WCTS by excluding, to the maximum extent, the intrusion of surface and ground water and other extraneous flows;

(B) Any necessary, specific flow limitations or allocation; and

(C) Requirements on the contracting party to ensure compliance with the legal authorities required in 40 C.F.R. § 403.8(f) with regard to equivalent control,

monitoring and enforcement of industrial use dischargers into the Authority's WCTS from other municipal satellite sewer systems.

ii. A delineation of provisions addressing the term or life of these agreements; mechanisms for appropriate modification of the agreements; and mechanisms for enforcement of the agreements (including a description of the legal support necessary to develop, oversee and enforce the agreements) such as provisions permitting termination of the agreement and physical disconnection from the Authority's WCTS within a reasonable time not exceeding two (2) years upon the failure of the contracting party to comply with its capacity, management, operations, and maintenance obligations.

iii. Provision that when any of the Authority's currently existing agreements expire or terminate, the Authority may, but shall not be required to, renew any such agreement or enter into a new agreement covering the collection, conveyance, and treatment of sewage from such other municipal satellite sewer system. In the event the Authority does renew such an agreement or enters into any such new agreement, each agreement shall be consistent with the requirements of the Inter-Jurisdictional Agreement Program.

(b). Continuing Sewer System Assessment Program ("CSSAP") for the WCTS. Within six (6) Months after the Effective Date of this Consent Decree, the Authority shall submit to EPA for review and approval a CSSAP to analyze the infrastructure of the WCTS. The CSSAP shall establish procedures for setting priorities and schedules for undertaking the continual WCTS assessment components set forth in Subparagraphs (b).i. through (b).vii. below. The CSSAP shall develop these priorities and schedules taking into consideration the nature and extent of customer complaints; flow monitoring, including flow

isolation studies; location and cause of SSOs; and any other relevant information. The CSSAP shall include standard procedures for a CSSAP information management system and performance goals for each component of the CSSAP set forth in Subparagraphs (b).i. through (b).vii. below. Upon approval, the Authority shall implement the CSSAP and such assessment components in accordance with the schedules established pursuant to the CSSAP to analyze the infrastructure of the WCTS.

i. Dyed Water Flooding. The Dyed Water Flooding component of the CSSAP shall establish standard procedures for conducting dyed water testing to locate sources of I/I to the WCTS. The Dyed Water Flooding component shall include standard forms for Private Laterals and manholes.

ii. Corrosion Defect Identification. The Corrosion Defect Identification component of the CSSAP shall establish standard procedures for inspecting and identifying sewer infrastructure that is either corroded or at risk of corrosion. The Corrosion Defect Identification component shall include a system for prioritizing repair of corrosion defects, corrosion identification forms, and procedures for a corrosion defect analysis.

iii. Routine Manhole Inspection. The Routine Manhole Inspection component of the CSSAP shall establish standard procedures for routine inspection of all manholes within the WCTS. The Routine Manhole Inspection component shall include a system for prioritizing repair of manhole defects, manhole inspection forms, and procedures for a manhole defect analysis.

iv. Flow Monitoring. The Flow Monitoring component of the CSSAP shall establish standard procedures for routine flow monitoring during dry and wet weather to

support engineering analyses related to sewer system capacity and peak flow studies. Dry weather monitoring shall be carried out so as to allow the characterization of base flows and I/I rates. Wet weather monitoring shall be conducted periodically during events of sufficient duration and intensity that cause significant I/I into the WCTS. The Flow Monitoring component shall identify areas susceptible to I/I into the WCTS. The Flow Monitoring Program shall establish a process for determining the number and locations of permanent and temporary flow meters; a program for sewer cleaning associated with flow monitoring; and a procedure for adequate rainfall measurement.

v. Closed Circuit Television ("CCTV"). The CCTV component of the CSSAP shall establish standard procedures for routine use of CCTV to support sewer assessment activities, and shall include procedures for CCTV cleaning and a process for the retention and access of CCTV data.

vi. Gravity System Defect Analysis. The Gravity System Defect Analysis component of the CSSAP shall establish standard procedures for analysis of gravity sewer system defects. Such procedures shall include Private Lateral investigations to identify sources of I/I to the WCTS. The Gravity System Defect Analysis component shall establish standard defect codes; defect identification procedures and guidelines; and a standardized process for cataloging gravity system defects.

vii. Smoke Testing. The Smoke Testing component of the CSSAP shall establish standard procedures for smoke testing of the gravity sewer system to identify sources of I/I to the WCTS, including cross connections and other unauthorized connections. Such procedures shall include Private Lateral investigations to identify sources of I/I to the

WCTS. The Smoke Testing component shall include smoke testing forms and procedures for smoke testing defect analysis.

(c). Continuing Infrastructure Rehabilitation Program ("CIRP") for the WCTS.

No later than three (3) Months after EPA approval of the CSSAP, the Authority shall submit to EPA for review and approval a CIRP. The CIRP shall employ the components identified in Subparagraphs (c).i. through (c).iv. below to, among other things, address I/I and the other conditions causing SSOs, with the goal of eliminating future SSOs. The CIRP shall take into account all information gathered pursuant to the CSSAP. The CIRP shall include standard procedures for a CIRP information management system and procedures for analysis of the effectiveness of completed rehabilitation for each component of the CIRP set forth in Subparagraphs (c).i. through (c).iv. below. Upon approval, the Authority shall implement the CIRP and its components in accordance with the schedules established pursuant to the CIRP to rehabilitate the infrastructure of the WCTS. Those schedules shall require the CIRP and its components to be implemented as soon as practicable.

i. Gravity Line Rehabilitation. The Gravity Line Rehabilitation component of the CIRP shall require rehabilitation of all gravity sewer lines and related appurtenances that have been identified as in need of rehabilitation under the CSSAP. The Gravity Line Rehabilitation component shall establish a process for setting gravity line rehabilitation priorities and schedules; shall establish an ongoing inventory of gravity line rehabilitation, including identification of the rehabilitation techniques used; shall require an analysis of the effectiveness of completed rehabilitation; and shall identify currently scheduled gravity line rehabilitation.

ii. Manhole Rehabilitation. The Manhole Rehabilitation component of the CIRP shall require rehabilitation of all manholes that have been identified as in need of rehabilitation under the CSSAP. The Manhole Rehabilitation component shall establish a process for setting manhole rehabilitation priorities and schedules; shall establish an ongoing inventory of manhole rehabilitation, including identification of the rehabilitation techniques used; and shall identify currently scheduled manhole rehabilitation.

iii. Pump Station Rehabilitation. The Pump Station Rehabilitation component of the CIRP shall require rehabilitation of all pump stations that have been identified as in need of rehabilitation under the CSSAP. The Pump Station Rehabilitation component shall establish a process for setting pump station rehabilitation priorities and schedules; shall establish an ongoing inventory of pump station rehabilitation, including identification of the rehabilitation techniques used; and shall identify currently scheduled pump station rehabilitation.

iv. Force Main Rehabilitation. The Force Main Rehabilitation component of the CIRP shall require rehabilitation of all force mains and related appurtenances that have been identified as in need of rehabilitation under the CSSAP. The Force Main Rehabilitation component shall establish a process for setting force main rehabilitation priorities and schedules; shall establish an ongoing inventory of force main rehabilitation, including identification of the rehabilitation techniques used; and shall identify currently scheduled force main rehabilitation.

17. Specific Capital Improvement Projects. Based on previous investigations, the Authority has identified certain rehabilitation projects that are intended to address conditions currently causing SSOs in the WCTS. These specific capital improvement projects are

identified and described in Appendix C, attached hereto and incorporated herein. The Authority shall complete each of these capital improvement projects in accordance with the schedules set forth in Appendix C.

VII. CIVIL PENALTY

18. Within thirty (30) Days after the Effective Date of this Consent Decree, the Defendants shall pay to the United States the sum of \$300,000 as a civil penalty by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to the Defendants, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Eastern District of North Carolina, Southern Division, 2 Princess Street Wilmington, NC 2840, (910) 815-4933. At the time of payment, the Defendants shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. City of Wilmington et al., and shall reference the civil action number and DOJ case number 90-5-1-1-09405, to the United States in accordance with Section XV of this Consent Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

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

In the event that full cash payment to the United States is not made within thirty (30) Days of the Effective Date, the Defendants shall pay to the United States interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

VIII. REPORTING REQUIREMENTS

19. Quarterly SSO Reports. Beginning thirty (30) Days after the first full three (3) Month period after the Effective Date of this Consent Decree, and thirty (30) Days after each subsequent three (3) Month period thereafter until termination of the Consent Decree, the Authority shall submit a Quarterly SSO Report to EPA. Each Quarterly SSO Report shall include the date, location, source, time reported, time stopped, estimated volume, receiving water (if any), cause, and actions taken to repair or otherwise resolve the cause of all SSOs occurring in the WCTS within the applicable three (3) Month period in a tabulated electronic format.

20. Semi-Annual Reports. Beginning thirty (30) Days after the first full six (6) Month period after the Effective Date of this Consent Decree, and thirty (30) Days after each subsequent six (6) Month period until termination of the Consent Decree, the Authority shall submit a Semi-Annual Report to EPA for review and comment to ensure consistency with reporting requirements of this Paragraph. Each Semi-Annual Report shall include, at a minimum:

(a). A summary description of projects and significant activities completed and deadlines achieved during the previous applicable six (6) Month period pursuant to the requirements of this Consent Decree, in Gantt chart or similar format, including a summary of any missed deadline required by this Consent Decree and, if applicable, the reasons for missing such deadline. If any missed deadline cannot be fully explained at the time the report is due, the Authority shall include a statement to that effect in the report. The Authority shall investigate to determine the cause of the missed deadline and then shall submit an amendment to the report, including a full explanation of the cause of the missed deadline, within thirty (30) Days after submission of the Semi-Annual Report.

(b). A summary of projects and significant activities anticipated to be performed, and deadlines anticipated to be achieved, in the successive applicable six (6) Month period to comply with the requirements of this Consent Decree, in Gantt chart or similar format.

(c). A narrative summary of progress made, including key accomplishments and significant activities, under the CMOM programs implemented or modified pursuant to this Consent Decree for the most recent six (6) Month period.

(d). A trends analysis of the number, volume, average duration, and cause of the County's SSOs for the previous twenty-four (24) Month period.

21. Compliance with this Section does not relieve the Authority of any other reporting obligations required by the Clean Water Act or its implementing regulations, or by any other Federal, State, or local law, regulation, permit, or other requirement, including the NPDES Permits.

22. Notification to EPA pursuant to this Section shall not by itself or otherwise satisfy the notification requirements set forth in Section X (Force Majeure).

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

IX. STIPULATED PENALTIES

24. The Authority shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree,

according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

25. If the Defendants fail to pay the civil penalty required to be paid under Section VII of this Consent Decree (Civil Penalty) when due, the Authority shall pay a stipulated penalty of \$1,000 per day for each day that the payment is late.

26. The following stipulated penalties shall accrue for each violation indentified below:

(a). For each failure to Timely submit any of the Deliverables required in Section VI (Compliance Requirements), a stipulated penalty for each day the Authority remains out of compliance for failure to Timely submit any such Deliverable may be assessed as follows:

<u>Period of Noncompliance:</u>	<u>Penalty Per Violation Per Day:</u>
1-30 days	\$500
More than 30 days	\$1,000

(b). For each day the Authority fails to Timely implement any Work required in Section VI (Compliance Requirements), daily stipulated penalties may be assessed for each such item of Work as follows:

<u>Period of Noncompliance:</u>	<u>Penalty Per Violation Per Day:</u>
1-30 days	\$500
31-60 days	\$1,500
More than 60 days	\$2,000

(c). For each SSO in the WCTS that reaches waters of the United States, a stipulated penalty may be assessed as follows:

<u>If SSO Occurs:</u>	<u>Penalty Per SSO:</u>
Within 2 years from the Effective Date	\$250 for SSO 5,000 gallons or below \$1,000 for SSO over 5,000 gallons
Between 2 and within 4 years from the Effective Date	\$500 for SSO 5,000 gallons or below \$1,500 for SSO over 5000 gallons
4 years or more from the Effective Date	\$1,000 for SSO 5000 gallons or below \$3,000 for SSO over 5000 gallons

27. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

28. The Authority shall pay stipulated penalties to the United States within thirty (30) Days of a written demand by EPA.

29. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

30. Stipulated penalties shall continue to accrue as provided in Paragraph 27, during any Dispute Resolution, but need not be paid until the following:

(a). If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, the Authority shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

(b). If the dispute is appealed to the Court and the United States prevails in whole or in part, the Authority shall pay all accrued penalties determined by the Court to be owed, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in Subparagraph (c)., below.

(c). If the District Court's decision is appealed, the Authority shall pay all accrued penalties determined to be owed, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

31. The Authority shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 18, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

32. If the Authority fails to pay stipulated penalties according to the terms of this Consent Decree, the Authority shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for the Authority's failure to pay any stipulated penalties.

33. Subject to the provisions of Section XIII of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for the Defendants' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Water Act, the Authority shall be allowed a credit

for any stipulated penalties paid against any statutory penalties imposed by the United States for such violation.

X. FORCE MAJEURE

34. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Defendants, of any entity controlled by the Defendants, or of the Defendants' consultants and contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Defendants' best efforts to fulfill the obligation. The requirement that the Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Defendants' financial inability to perform any obligation under this Consent Decree.

35. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Defendants shall provide notice orally or by electronic or facsimile transmission to EPA, within seventy-two (72) hours of when the Defendants first knew that the event might cause a delay. Within seven (7) Days thereafter, the Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim;

and a statement as to whether, in the opinion of the Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude the Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Defendants shall be deemed to know of any circumstance of which the Defendants, any entity controlled by the Defendants, or the Defendants' contractors knew or should have known.

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

37. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Defendants in writing of its decision.

38. If the Defendants elect to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, the Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be

warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Defendants complied with the requirements of Paragraphs 34 and 35 above. If the Defendants carry this burden, the delay at issue shall be deemed not to be a violation by the Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XI. DISPUTE RESOLUTION

39. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. The Defendants' failure to seek resolution of a dispute under this Section shall preclude the Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of the Defendants arising under this Consent Decree.

40. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement between the United States and the Defendants. If the United States and the Defendants cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, the Defendants invoke formal dispute resolution procedures as set forth below.

41. Formal Dispute Resolution. The Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the Defendants' position and any supporting documentation relied upon by the Defendants. The United States shall serve its Statement of Position within one hundred (100) Days of receipt of the Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on the Defendants, unless the Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

42. Judicial Dispute Resolution. The Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within twenty (20) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree. The United States shall respond to the Defendants' motion within the time period allowed by the Local Rules of this Court. The Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

43. Standard of Review.

(a). Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraphs 40 and 41 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the Defendants shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

(b). Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraphs 40 and 41, the Defendants shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the objectives of the Consent Decree.

44. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 30. If the Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. RIGHT OF ENTRY AND INFORMATION COLLECTION AND RETENTION

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

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

46. Upon request, the Defendants shall provide EPA or their authorized representatives splits of any samples taken by the Defendants. Upon request, EPA shall provide the Defendants splits of any samples taken by EPA.

47. Until five (5) years after the termination of this Consent Decree, the Defendants shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to the Defendants' performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United

States, the Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

48. At the conclusion of the information-retention period provided in the preceding Paragraph, the Defendants shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, the Defendants shall deliver any such documents, records, or other information to EPA. The Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendants assert such a privilege, it shall provide the following:

- (a). the title of the document, record, or information;
- (b). the date of the document, record, or information;
- (c). the name and title of each author of the document, record, or information;
- (d). the name and title of each addressee and recipient;
- (e). a description of the subject of the document, record, or information;
- (f). the privilege asserted by the Defendants.

However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

49. The Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that the Defendants seeks to protect as CBI, the Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

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

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

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

52. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 51. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CWA or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 51. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Sewer System, whether related to the violations addressed in this Consent Decree or otherwise.

53. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Sewer System or the Defendants' violations, the Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion,

claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 51 of this Section.

54. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or with any other provisions of federal, State, or local laws, regulations, or permits.

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

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

XIV. COSTS

57. The Parties shall bear their own costs of this action, including attorneys' fees, except that 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 due but not paid by the Defendants.

XV. NOTICES

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

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-09405

Bill Weinischke
Environmental Enforcement Section
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611

and

Chief, Clean Water Enforcement Branch
Water Protection Division
ATTN: Brad Ammons
U.S Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9761

To EPA:

Chief, Clean Water Enforcement Branch
Water Protection Division
ATTN: Brad Ammons
U.S Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9761

To the State:

Lacy M. Presnell, III
General Counsel
N.C. Department of Environment and Natural Resources
1601 Mail Service Center (Mailing Address)
Raleigh, NC 27699-1601
217 W. Jones Street (Physical Address)
Raleigh, NC 27603
919-707-8616 (Phone/Fax)
lacy.presnell@ncdenr.gov

Kathryn Jones Cooper
Special Deputy Attorney General
Water and Land Section
Environmental Division
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
(919) 716-6600 (main telephone number)
(919) 716-6960 (direct dial)
(919) 716-6766 (fax)
kcooper@ncdoj.gov

To the Defendants:

Matthew W. Jordan, CEO
CFPUA
235 Government Center Drive
Wilmington, NC 24803
910-332-6542

Linda A. Miles, the Miles Firm, PLLC
Attorney for CFPUA
1704 North Lumina Avenue
Wrightsville Beach, NC 28480
910-256-9513

Chris Coudriet, County Manager
New Hanover County
230 Government Center Drive, Suite 195
Wilmington, NC 28403
910-798-7184

Wanda Copley
Attorney for New Hanover County
230 Government Center Drive, Suite 125
Wilmington, NC 28403
910-798-7153

Kemp Burpeau, Deputy County Attorney
New Hanover County
230 Government Center Drive, Suite 125
Wilmington, NC 28403
910-798-7153

Sterling Cheatham, Manager
City of Wilmington
P.O. Box 1810, 102 N. Third Street
Wilmington, NC 28402
910-341-7810

Bill Wolak
City of Wilmington Attorney
P.O. Box 1810, 305 Chestnut Street
Wilmington, NC 28402
910-341-7820

Joseph E. Betts
City of Wilmington Assistant Attorney
P.O. Box 1810, 305 Chestnut Street
Wilmington, NC 28402
910-341-7820

59. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

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

XVI. EFFECTIVE DATE

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

XVII. RETENTION OF JURISDICTION

62. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent Decree or entering orders modifying this Consent Decree, pursuant to Sections XI and XVIII, or effectuating or enforcing compliance with the terms of this Consent Decree.

XVIII. MODIFICATION

63. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by the Plaintiff and the Defendants. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court. Non-material changes to this Consent Decree (including appendices) may be made by written agreement of the Plaintiff and the Defendants without court approval, and the Plaintiff and the Defendants may by mutual agreement determine whether a modification is non-material.

64. Any disputes between the Plaintiff and the Defendants concerning modification of this Consent Decree shall be resolved pursuant to Section XI of this Consent Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 43, the entity seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XIX. FINAL REPORT AND TERMINATION

65. Within sixty (60) days after the Authority has (a) properly implemented for a period of twenty-four (24) Months all the CMOM programs set forth in Paragraph 16 of this Consent Decree and (b) completed the specific capital improvement projects set forth in Paragraph 17 of this Consent Decree, the Authority shall submit to EPA a Final Report that includes a description of all of the actions that have been taken toward achieving compliance with this Consent Decree and an assessment of the effectiveness of such actions in eliminating SSOs.

66. If EPA determines, after review of the Final Report, that (a) any CMOM program as set forth in Paragraph 16 of this Consent Decree has not been properly implemented for a period of twenty-four (24) Months in accordance with this Consent Decree or (b) that any specific capital improvement project set forth in Paragraph 17 of this Consent Decree has not been completed, EPA will notify the Defendants, provide a list of the deficiencies, and may require the Authority to modify the applicable CMOM program(s) as appropriate in order to correct such deficiencies. If so required, the Authority shall implement the modified CMOM program(s) and shall submit a modified Final Report on behalf of the Defendants in accordance

with the EPA notice, subject to the Defendants' right to invoke Dispute Resolution pursuant to Section XI of this Consent Decree.

67. This Consent Decree shall be subject to termination when the United States determines that:

(a). The Authority has properly implemented for a period of twenty-four (24) months the CMOM program as set forth in Paragraph 16 and/or made any corrections required by EPA under Paragraph 66;

(b). The Authority has completed the specific capital improvement projects set forth in Paragraph 17; and

(c). The Defendants have fulfilled all other obligations of this Consent Decree, including payment of the civil penalty under Section VII of this Consent Decree and any accrued stipulated penalties as required by Section IX of this Consent Decree not waived or reduced by the United States.

68. The Defendants shall serve upon the United States a Request for Termination, certifying that the Defendants have satisfied those requirements, together with all necessary supporting documentation.

69. Following receipt by the United States of the Defendants' Request for Termination, the United States and the Defendants shall confer informally concerning the Request and any disagreement that they may have as to whether the Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that this Consent Decree may be terminated, the United States and the

Defendants shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

70. If the United States does not agree that this Consent Decree may be terminated, the Defendants may invoke Dispute Resolution under Section XI of this Consent Decree. However, the Defendants shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 43 of Section XI, until one hundred-twenty (120) Days after service of its Request for Termination.

XX. PUBLIC PARTICIPATION

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

XXI. SIGNATORIES/SERVICE

72. Each undersigned representative of the Plaintiff and the Defendants certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

73. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. The Defendants agree to accept service of process by mail with respect

to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXII. INTEGRATION

74. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Plaintiff and the Defendants with respect to the settlement embodied in this Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than Deliverables that are subsequently submitted and approved pursuant to this Consent Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XXIII. FINAL JUDGMENT

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

XXIV. APPENDICES

76. The following appendices are attached to and part of this Consent Decree:

“Appendix A” is a list of completed capital improvement projects.

“Appendix B” is the CDROM disk containing US EPA Region IV CMOM guidance;

“Appendix C” is the list of Specific Capital Improvement Projects; and

Dated and entered this ___ day of _____, ____.

[]
UNITED STATES DISTRICT JUDGE
Eastern District of North Carolina

WHEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/ Robert G. Dreher
ROBERT G. DREHER
Acting Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

/s/ William A. Weinischke
WILLIAM A. WEINISCHKE
Senior Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Telephone: 202-514-4592
Facsimile: 202-616-2427
Bill.Weinischke@usdoj.gov

WHEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

THOMAS G. WALKER
United States Attorney

/s/ R.A. Renfer, Jr.
R.A. RENFER, JR.
Assistant United States Attorney
Chief, Civil Division
310 New Bern Avenue
Suite 800 Federal Building
Raleigh, NC 27601-1461
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
Email: rudym.renfer@usdoj.gov
N.C. Bar #11201

WHEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

/s/ V. Anne Heard
V. ANNE HEARD
Acting Regional Counsel
United States Environmental Protection Agency
Region 4
61 Forsythe Street
Atlanta, GA 30303

OF COUNSEL:

/s/ William B. Bush, Jr.
WILLIAM B. BUSH, JR
Associate Regional Counsel
United States Environmental Protection Agency
Region 4
61 Forsythe Street
Atlanta, GA 30303
Telephone: 404-562-9538
Facsimile: 404-562-9486

WHEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

/s/ Susan Shinkman

SUSAN SHINKMAN

Director

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance

United States Environmental Protection Agency

/s/ Mark Pollins

MARK POLLINS

Division Director

Water Enforcement Division

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance

United States Environmental Protection Agency

/s/ Robert D. Fentress

ROBERT D. FENTRESS

Water Enforcement Division

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance

United States Environmental Protection Agency

1200 Pennsylvania Ave., N.W. (2243A)

Washington, DC 20460

Telephone: 202-564-7023


Facsimile: 202-562-0024


FOR DEFENDANT CAPE FEAR PUBLIC UTILITY AUTHORITY:



MATTHEW JORDAN
Chief Executive Officer
Cape Fear Public Utility Authority
235 Government Center Drive
Wilmington, N.C. 28403

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. The pre-audit applies to all portions of this Consent Decree except Section VII, Civil Penalty, which will be paid by the City of Wilmington from a portion of the water and sewer assets not yet conveyed to the Authority. (According to City Assistant Finance Director – Treasurer, \$2,000,000 as estimated by the City for the assessment was expensed by the City in FY2008. The cash left the utility fund and went to the General Fund and was offset by a payable to the State of North Carolina.)

By: 
Cheryl Spivey, Authority Finance Officer
May 24, 2013


Approved as to Form

FOR DEFENDANT NEW HANOVER COUNTY:



CHRIS COUDRIET
Manager
New Hanover County
230 Government Center Drive
Suite 125
Wilmington, N.C. 28403

This instrument has been preaudited in the manner required by the
Local Government Budget and Fiscal Control Act.

This the 4th day of June, 2013.



County Finance Director

FOR DEFENDANT CAPE FEAR PUBLIC UTILITY AUTHORITY:



MATTHEW JORDAN
Chief Executive Officer
Cape Fear Public Utility Authority
235 Government Center Drive
Wilmington, N.C. 28403

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. The pre-audit applies to all portions of this Consent Decree except Section VII, Civil Penalty, which will be paid by the City of Wilmington from a portion of the water and sewer assets not yet conveyed to the Authority. (According to City Assistant Finance Director – Treasurer, \$2,000,000 as estimated by the City for the assessment was expensed by the City in FY2008. The cash left the utility fund and went to the General Fund and was offset by a payable to the State of North Carolina.)


By: 

Cheryl Spivey, Authority Finance Officer
May 24, 2013




Approved as to Form

FOR DEFENDANT CITY OF WILMINGTON:


STERLING B. CHEATHAM
City Manager
City Hall
102 N. Third Street
Wilmington, N.C. 28402

Approved as to form:


William Wolak, City Attorney

CERTIFICATION

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

This 22 day of May, 20 13.


Debra H. Mack, City Finance Officer

Project Number: _____ (if applicable)

Account Number: 010-000-207-01-00

Amount of Contract: \$ 300,000.00

Federal ID Number: 56-6000239

APPENDIX A

SPECIFIC CAPITAL IMPROVEMENT PROJECTS COMPLETED

1. Project Northeast Interceptor (NEI) Assessment

PROJECT SUMMARY

Evaluate the capacity, condition, and reliability of the Northeast Interceptor (NEI) system, and provide recommendations for proposed improvements.

SCHEDULE

COMPLETE

PROJECT COST

\$462,928

2. Northeast Interceptor (NEI) Phase 1 Improvements

PROJECT SUMMARY

Rehabilitation of NEI components identified in the Northeast Interceptor Improvements Preliminary Engineering Report prepared by Kimley Horn and Associates in 2007 as "in urgent need of repair", to include rehabilitation of approximately 2,000 linear feet of 20-inch force main along Greenville Loop Road, rehabilitation/replacement of gravity sewer sections directly upstream of the Hewlett's Creek Pump Station, replacement of the junction box at Hewlett's Creek Pump Station, and replacement of all air release valve assemblies on the Northeast Interceptor between Bradley Creek Pump Station and the Southside Waste Water Treatment Plant.

SCHEDULE

COMPLETE

PROJECT COST

\$3,357,984

3. Bradley Creek Junction Box Replacement

PROJECT SUMMARY

Replacement of the junction box and connecting pipe segments at the Bradley Creek Pump Station.

SCHEDULE COMPLETE

PROJECT COST \$1,002,225

4. Pump Station 34 and 35 Electrical Improvements

PROJECT SUMMARY

Replacement of electrical, pump, and control components at the Hewlett's Creek (Pump Station 34) and Bradley Creek (Pump Station 35) Pump Stations, to include variable frequency drives, applicable pump and motor components, and associated control programming.

SCHEDULE COMPLETE

PROJECT COST \$3,252,497

5. Interim Pump Station Capacity Improvements

PROJECT SUMMARY

Installation of interim diesel-powered pumps with temporary piping connections at Hewlett's Creek and Bradley Creek Pump Station, to increase pumping capacity to meet interim peak flow needs in the Northeast Interceptor system.

SCHEDULE COMPLETE

PROJECT COST \$1,474,685

6. Northeast Interceptor (NEI) 24-Inch Force Main Relocation

PROJECT SUMMARY

Installation of approximately 7,000 linear feet of 24-inch force main to replace a portion of existing 24-inch Northeast Interceptor Force Main that ran along Hewlett's Creek.

SCHEDULE COMPLETE

PROJECT COST \$2,243,124

7. Northeast Interceptor (NEI) Odor and Corrosion Control Program (OCCP) Improvements

PROJECT SUMMARY

Chemical dosing facility improvements to improve the effectiveness of the OCCP chemical dosing to better reduce odor and corrosion to prolong the life of the sewer infrastructure, and improve the reliability of the Northeast Interceptor force main system. Modifications to the system include the installation of 9 chemical dosing facilities that can support the use of multiple chemicals and the installation of 7 hydrogen sulfide monitoring units.

SCHEDULE COMPLETE

PROJECT COST \$1,436,860

8. Pump Station 35 Expansion

PROJECT SUMMARY

Upgrade the Bradley Creek Pump Station to increase capacity and rehabilitate aging infrastructure. Upgrades include replacing two existing pumps with 400-horsepower pumps, associated variable frequency drives and pump station controls; pipe modifications to provide for connection to the Northeast Interceptor Northside Force Main; replacing the emergency generator; and rehabilitating the mechanical bar screen and bar screen structure.

SCHEDULE COMPLETE

PROJECT COST \$3,023,860.

9. Ogden Interceptor Replacement

PROJECT SUMMARY

Replace approximately 8670 feet of 48 & 36 - inch gravity sanitary sewer.

SCHEDULE COMPLETE

PROJECT COST (Construction Cost) \$5,590,000

10. Northeast Interceptor (NEI) Northside Force Main (CONTRACT 1A)

PROJECT SUMMARY

Installation of approximately 23,400 feet of 24-inch force main from station 17+ 27 located at Bradley Creek Pump Station to station 169 +96 near Clear Run Drive and including Construction of a 24-inch force main interconnect from station 800+00 to station 881+35 as referenced on the Northeast Interceptor Northside Force Main Project Contract Drawings prepared by Kimley Horn and Associates.

SCHEDULE

COMPLETE

PROJECT COST

\$5,318,398

APPENDIX C

SPECIFIC CAPITAL IMPROVEMENT PROJECTS TO BE COMPLETED

For the purpose of this Consent Decree, a Capital Improvement Project identified in this Appendix to be completed shall be considered complete when a Certificate of Substantial Completion has been certified and issued by a North Carolina Professional Engineer for the project. A Certificate of Substantial Completion shall not be issued until the improvements have been designed and constructed in substantial conformance with the project plans and specifications and is available for use for the purpose intended.

1. Northeast Interceptor (NEI) Northside Force Main (CONTRACT 1B)

PROJECT SUMMARY

Installation of approximately 29,167 feet of 24-inch force main to connect the James A. Loughlin (Northside) Wastewater Treatment Plant at station 461+63.95 to the previously installed portion of the Northside Force Main at station 169+96 as referenced on the Northeast Interceptor Northside Force Main Project Contract Drawings prepared by Kimley Horn and Associates.

SCHEDULE

Contract 1B Design	August 31, 2012
Award Construction Contract 1B	November 30, 2013
Contract 1B Construction Completion	April 30, 2015

PROJECT COST \$13,422,260

2. Northeast Interceptor (NEI) Rehabilitation Phase 2

PROJECT SUMMARY

Replacement of approximately 4,800 linear feet of 20-inch force main between the Bradley Creek and Hewlett's Creek Pump Stations. Pipe segments to be rehabilitated or replaced generally are aligned with the following stations:

Station 10+ 38 to station 16+ 95;

Station 66 + 50 to station 90 +14

Station 111+54 to station 117 +00;

Station 126 + 00 to station 134 + 50 and,

Station 149 + 50 to station 153 +50.

SCHEDULE

Design	July 31, 2013
Award	November 30, 2013
Construction Completion	April 30, 2015

<u>PROJECT COST</u>	(ESTIMATE: DESIGN AND CONSTRUCTION)	\$3,559,900
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