

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
and COMMONWEALTH OF	)	
PENNSYLVANIA,	)	
	)	
Plaintiffs,	)	Civil Action No.
	)	
v.	)	
	)	
BRISTOL TOWNSHIP,	)	
	)	
Defendant	)	
_____	)	

**CONSENT DECREE**

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 Administrator of the United States Environmental Protection Agency ("EPA"), and co-Plaintiff, the Commonwealth of Pennsylvania Department of Environmental Protection ("Commonwealth," "PADEP," or "Department") acting at the request and on behalf of the Secretary of PADEP have filed the Complaint in this action seeking injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319 ("Clean Water Act" or "CWA"), naming as Defendant, Bristol Township (hereinafter referred to as "Defendant" or "Bristol" or "Township" or "Bristol Township") for Defendant's alleged violations of the federal Clean Water Act, 33 U.S.C. §§ 1251-1387, and the Pennsylvania Clean Streams Law, Act of June 22, 1937, P.S. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 ("the Clean Streams Law");

WHEREAS, the Defendant owns and operates a sanitary sewer collection system and wastewater treatment plant that serves the citizens of Bristol Township;

WHEREAS, pursuant to Section 402 of the Act, 33 U.S.C. § 1342, EPA has authorized the Commonwealth to administer the National Pollutant Discharge Elimination System (“NPDES”) in Pennsylvania;

WHEREAS, the Department has issued an NPDES permit to Bristol Township authorizing the discharge of treated effluent from the Defendant’s wastewater treatment plant;

WHEREAS, the United States alleges that Defendant has violated and continues to violate Sections 301 and 307 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1317, by discharging pollutants exceeding various effluent limitations and conditions set forth in Defendant’s NPDES permit as well as violating the requirements of the federally approved pretreatment program;

WHEREAS, the United States alleges that Defendant has violated Section 301 of the CWA, 33 U.S.C. § 1311, with the occurrence of unpermitted discharges from sanitary sewer overflows (“SSOs”), including unpermitted discharges on September 30, 2004 and December 30, 2006;

WHEREAS, the Department alleges that Defendant has violated and continues to violate Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202 by discharging pollutants exceeding various effluent limitations and conditions set forth in Defendant’s NPDES permit;

WHEREAS, the Department is the agency with the duty and authority to administer and enforce the Clean Streams Law, and Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510.17 (“Administrative Code”) and the rules and regulations promulgated thereunder;

WHEREAS, Bristol Township exists under the laws of the Commonwealth of Pennsylvania with its office located in Bristol Township, Bucks County. The mailing address of

that office is 2501 Bath Road, Bristol, PA 19007. The Township is considered a “municipality” as that term is defined in Section 1 of the Clean Streams Law;

WHEREAS, the Commonwealth alleges that Defendant has violated the Clean Streams Law, 35 P.S. 691.401, with the occurrence of unpermitted discharges from SSOs, including those that occurred on December 30, 2006 and July 20, 2007;

WHEREAS, the United States and Commonwealth allege that Defendant has violated its NPDES permit by failing to submit accurate discharge monitoring reports;

WHEREAS, the United States and Commonwealth allege that Defendant has violated its NPDES permit by failing to properly operate and maintain the Publicly Owned Treatment Works (“POTW”);

WHEREAS, the Parties have negotiated in good faith and have reached a settlement of the issues raised in the Complaint;

WHEREAS, the Parties agree, and the Court finds, that settlement of the claims alleged in the Complaint without further litigation or trial of any issues is fair, reasonable and in the public interest and that the Lodging of this Consent Decree is the most appropriate way of resolving the claims alleged in the Complaint.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

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## **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action and over the Parties to this action pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and 28 U.S.C. § 1331. The Complaint states claims upon which relief may be granted against the Defendant for injunctive relief and civil penalties under Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and Sections 601 and 605 of the Clean Streams Law, 35 P.S. §§ 691.601 & 691.605. Venue is proper in this District pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a). Defendant waives any and all objections or defenses that it might have to the Court's jurisdiction to enter and enforce this Consent Decree or to venue in this District.

## **II. BINDING EFFECT**

2. The provisions of this Consent Decree shall apply to and be binding on the United States and the Commonwealth, and on Bristol Township, its agents, successors, and assigns.

3. Within thirty (30) days from the Date of Lodging of this Consent Decree until its termination, Defendant shall give written notice of and provide a copy of this Consent Decree to any person or entity to whom Defendant may transfer ownership or operation of any portion of Waste Water Treatment Plant (“WWTP”) and/or Collection System. The Defendant shall notify EPA, the Department and the United States Department of Justice in writing of any successor in interest at least twenty-one (21) days prior to any such transfer. No transfer of ownership or operation of the POTW and/or Collection System shall relieve Defendant of its obligations to ensure that the terms of this Consent Decree are implemented.

4. Defendant shall be solely responsible for ensuring that performance of the work contemplated under this Consent Decree is undertaken in accordance with the deadlines and requirements contained in this Consent Decree, and any exhibits hereto. Any action taken by

any contractor or consultant retained to implement Defendant's duties under this Consent Decree shall be considered an action of Defendant for purposes of determining compliance with this Consent Decree. In an action to enforce this Consent Decree, Defendant shall not assert as a defense against the United States, EPA or the Department any act or failure to act by any of its officers, council members, managers, commissioners, employees, agents, contractors, successors and assigns; however, this Consent Decree shall not limit Defendant's right to take all appropriate action against any person or entity that causes or contributes to Defendant's failure to perform.

### **III. PURPOSE**

5. The express purpose of the Parties entering into this Consent Decree is for Defendant to take all measures necessary to comply with the Clean Water Act and the regulations promulgated thereunder, and the Clean Streams Law and the regulations promulgated thereunder, to ensure compliance with Defendant's NPDES permit limitations and requirements, proper operation and maintenance of the WWTP and the collection system, and effective implementation of Defendant's Pretreatment Program.

### **IV. DEFINITIONS**

6. Unless otherwise defined herein, the terms used in this Consent Decree will have the meaning given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251-1387, and the regulations promulgated thereunder or, if not defined in the Clean Water Act or its regulations, then as defined in the Clean Streams Law, 35 P.S. §§ 691.1-691.1001, and the regulations promulgated thereunder. Any other words shall be given their ordinary meaning.

The following terms used in this Consent Decree, its appendices, and studies and plans submitted by Defendant and approved by EPA and the Department will be defined as follows:

(a) “Act 537” shall mean the Pennsylvania Sewage Facilities Act, 35 P.S. §§ 750.1, *et seq.*, and “537 Plan” shall mean a municipality’s Official Plan Revision as defined in the Pennsylvania Sewage Facilities Act.

(b) “Annual Report” shall mean the report submitted by Defendant, including, but not limited to, the Chapter 94 report, defined below, on or before March 31 of each calendar year pursuant to Section VI, Paragraph 41 of this Consent Decree.

(c) “Bypass” shall mean the intentional diversion of wastewater either at or after the headworks of the plant.

(d) “Chapter 94 Report” shall mean the annual report required by Section 94.12 of the Pennsylvania Code, Title 25, Chapter 94, Municipal Wasteload Management.

(e) “CAP” shall mean a Corrective Action Plan as defined in the Pennsylvania Code, Title 25, Chapter 94, Municipal Wasteload Management and shall include any additional requirements imposed by this Consent Decree.

(f) “CMP” shall mean a Connection Management Plan, which is that portion of a CAP defined in Chapter 94, Section 94.21(a)(3), as “limitations on and a program for control of new connections to the overloaded sewerage facilities and a schedule showing the dates each step toward compliance with Section 94.21(a)(2) shall be completed.”

(g) “Collection System Components” shall mean those components of the Sanitary System Collection System, described below, and specifically including all pipes, force mains, gravity lines, pump stations, sanitary sewer lines, lift stations, manholes and their respective related appurtenances, owned, operated or maintained by Bristol Township.

(h) “Construction Completion” of a construction project under Paragraph 26 or a rehabilitation or other corrective action project proposed under Paragraph 26 shall mean the point in time the new, modified, or rehabilitated facilities are functioning.

(i) “Date of Lodging” shall mean the date on which the Consent Decree is lodged with the United States District Court for the Eastern District of Pennsylvania.

(j) "Day" or "days" shall mean a calendar day or calendar days. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday or any Federal, Commonwealth of Pennsylvania or Defendant's legal holiday, Defendant shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other deliverable, with the exception of Rainfall and Flow Monitoring reports required by Paragraph 19.h.4 of this Consent Decree.

(k) "Department of Justice or DOJ" shall mean the United States Department of Justice and any successor departments or agencies of the United States government.

(l) "Discharge" shall mean a spill, release or diversion of sewage.

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

(n) "Industrial User" shall mean a source of indirect discharge, including any Significant Industrial User.

(o) "Infiltration" shall mean water, other than Sewage, that enters a sewer system through structural or mechanical defects in the system.

(p) "Inflow" shall mean water, other than Sewage or Infiltration, that enters a sewer system from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, French drains, foundation drains, streams, springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, storm water, surface runoff, street wash waters or drainage.

(q) "Information Management System" or "IMS" shall mean the system utilized, in accordance with Paragraph 12 of the Remedial Measures Section (Section V) of this Consent Decree, to track Sanitary Sewer Overflows, to identify known existing and potential sources of Sanitary Sewer Overflows and to maintain and manage the information necessary to operate and maintain Bristol's Collection System to eliminate existing Sanitary Sewer Overflows and avoid future Sanitary Sewer Overflows. The Information Management System shall consist of a



maintenance management system or systems, a Geographic Information System (“GIS”) or the functional equivalent, and a Pretreatment Data Management System Plan.

(r) “Maintenance Management System” shall mean the computer system that Bristol shall develop and utilize in accordance with Paragraph 12 of the Remedial Measures Section of this Consent Decree (Section V) to collect information regarding the operation, maintenance and performance of the Collection System, including maintenance history, repair history, and the status of the maintenance work to be implemented and completed under the Consent Decree, and the publicly owned treatment works.

(s) “NPDES Permit” or “Permit” shall mean the currently effective NPDES permit No. PA-0026450 originally issued to Defendant on January 10, 2002, amended on May 17, 2004, effective June 1, 2004 and which was renewed and later became effective on November 1, 2007. The permit authorized the discharge of treated effluent and set forth requirements regarding the operation and maintenance of the Facility and Collection System as well as effective implementation of the pretreatment program.

(t) “Operation and Maintenance Plan” shall mean the plan that Bristol shall develop and submit in accordance with the requirements contained in Paragraph 16 of the Remedial Measures Section (Section V) of this Consent Decree to respond adequately to the occurrence of Sanitary Sewer Discharges in its Collection System to protect human health and welfare.

(u) “Parties” shall mean the United States of America, the Commonwealth of Pennsylvania and Defendant.

(v) “Pennsylvania Department of Environmental Protection” or “PADEP” or the “Department” shall mean the Pennsylvania Department of Environmental Protection and any successor departments or agencies of the Commonwealth of Pennsylvania.

(w) “Plant” or “Facility” shall mean the publicly owned treatment works (POTW) located at 1800 River Road, Croydon, PA 19021, owned and operated by Bristol Township. This Facility provides wastewater treatment service for a portion of Bristol Township.

(x) "Pollution" shall mean contamination of any waters such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or change in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, radioactive, solid or other substances into such waters.

(y) "Pretreatment Data Management System" shall mean a computerized system developed in order to achieve and maintain full and complete compliance with the pretreatment requirements set forth in Defendant's approved pretreatment program, Defendant's NPDES permit, the CWA and the implementing regulations promulgated thereto.

(z) "Pretreatment Program" shall mean the currently approved and effective pretreatment program of Bristol Township developed in accordance with 40 C.F.R. Part 403.

(aa) "Preventive Maintenance" shall mean any inspection, condition, assessment, equipment and/or facility servicing, cleaning, upgrading, or other similar activity undertaken to help and/or maintain the components and/or the operation of the Collection System.

(bb) "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.

(cc) "Sanitary Sewer Discharge" or "SSD" shall mean any Discharge (as defined above) from Bristol's Collection System through a point source not specified in any NPDES permit to "Waters of the United States," and/or "Waters of the Commonwealth."

(dd) "Sanitary Sewer Overflows" or "SSOs" shall mean any Discharge from the Collection System, including, but not limited to, any SSDs.

(ee) "Sanitary Sewer Collection System" or "Collection System" shall mean the collection and transmission system (including all pipes, force mains, sanitary sewer lines, lift

stations, pump stations, manholes, and appurtenances thereto, owned by Defendant and designed to convey only sewage, and not storm water, from residences, commercial buildings, industrial plants and institutions for treatment at Defendant's wastewater treatment plants, including portions of the system added after the Date of Lodging of the Consent Decree.

(ff) "Sewage" shall mean any substance that contains any of the waste products or excrement or other discharge from the bodies of human beings or animals and any noxious or deleterious substances being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation, or which constitutes pollution under the Clean Water Act or the Clean Streams Law.

(gg) "Significant Industrial User" has the meaning as set forth in 40 C.F.R. § 403.4(t) and as used in Defendant's current approved pretreatment program. The regulatory definition of 403.4(t) shall control in the case of any conflict.

(hh) "Table of Deliverables", attached hereto as Appendix "F" is a list of deliverables, along with their due dates, under the Consent Decree.

(ii) "United States" shall mean the United States of America, acting on behalf of EPA.

(jj) "WQM Permit" shall mean a Water Quality Management Permit, aka Part II Permit, aka Clean Streams Law Permit for the construction and operation of the wastewater sewerage facilities. WQM permits are required for treatment plants, pumping stations, force mains, interceptors, and large collection systems.

(kk) "Waters of the Commonwealth" shall mean the "Waters of the Commonwealth" of Pennsylvania, as that term is defined in the Clean Streams Law.

(ll) "Waters of the United States" shall mean the "waters of the United States" as that term is defined in 40 C.F.R. section 122.22.

## V. REMEDIAL MEASURES

### A. GENERAL DUTIES

7. Duty to Comply with Permit At all times Defendant shall comply with all terms, conditions and requirements of the currently effective NPDES Permit, including the effluent limitations and with the Clean Water Act and the regulations promulgated thereunder.

Discharges of pollutants from the Facility or Collection System are prohibited except as authorized by the NPDES permit. In addition, Bristol shall eliminate SSOs and SSDs from the Collection System through development and implementation of the measures set forth in Paragraphs 11 through 32, below.

8. Operation and Maintenance of the Facility Defendant shall at all times maintain in good working order and properly operate and maintain the Facility, Collection System, Pump Stations and laboratory (including appropriate lab controls and quality assurance procedures).

9. Reports and Deliverables All plans, reports or other deliverables required under the terms of this Consent Decree shall be submitted to both EPA and the Department for review and approval. All plans and schedules submitted to and approved by EPA and the Department pursuant to this subsection shall be incorporated into and become enforceable under this Consent Decree.

10. Relationship between Federal and State Deliverables Plaintiffs and Defendant agree that any plans, reports, and/or other deliverables required to be submitted under any Section of this Consent Decree may also be submitted or combined with any reports or plans required solely by the Department under the Department's Chapter 94 and/or Act 537 requirements. Notwithstanding the above, this Consent Decree shall not excuse Defendant from meeting any deadlines, schedules and requirements pursuant to Act 537 and Chapter 94 of the Pennsylvania Code.

**B. INTERIM COMPLIANCE – PLAN OF ACTION (“POA”)**

11. Within one hundred and eighty (180) days of the Date of Lodging of this Consent Decree, Defendant shall submit to EPA and the Department all deliverables required under the POA as set forth in this section and in Section V.C. – V. G., below. Defendant shall implement the specific requirements of the POA according to the schedule developed therein. The EPA and the Department will have 120 days in which to review this submission and respond to it, which time period will be incorporated into the deliverables and the POA. In the event that the Department or the EPA fails to respond within 120 days and that failure is not due to the incompleteness of the Township’s submission, the Township will be entitled to an extension of time for each affected obligation described in the deliverables and the POA equal to the amount by which the Department or the EPA exceeded 120 days. Upon approval by EPA and the Department of the POA, all requirements and schedules detailed therein and provided thereunder shall be enforceable under this Consent Decree. The following elements of the POA are required to be submitted to EPA and the Department:

12. Information Management System Plan

a. Defendant shall submit to the EPA and the Department a plan for development of an Information Management System. Defendant shall continue to populate the attributes of the IMS as data is collected through the SSES on a schedule detailed in said plan. Within one year of the date of lodging, Defendant shall generate 11 x 17 inch GIS maps of each sewer service area tributary to the Defendant’s pump stations. The maps should illustrate the existing attributes in the Defendant’s GIS system, and should illustrate all intermunicipal connections. In populating these attributes, Defendant may rely upon design data. However, within this one year period, Defendant will verify the accuracy (“ground truth”) of at least 10% of the area depicted on the map through physical inspection of the items depicted therein and shall report to the EPA and the Department on the results of this verification process. The EPA and the Department may, in their sole discretion based on the results of this verification process,

insist that the Defendant physically verify the accuracy of all structures and elements depicted on the GIS system within eighteen (18) months of such decision being transmitted to Defendant in writing.

b. At a minimum, the plan submitted as part of the POA shall include a schedule providing for the population of the following attributes:

1. SSOs
2. SSDs
3. A Maintenance Management System (“MMS”) designed to manage and track all Maintenance activities, including but not limited to scheduled preventive and predictive maintenance tasks, as well as emergency (reactive) maintenance tasks. The MMS shall track both assigned and completion dates of maintenance tasks.

4. All Collection System components, private and public, including any public components owned by other municipal entities or authorities.

5. Attribute data for Sewer Segments including:

- a. Date of installation (if available);
- b. Pipe length;
- c. Age;
- d. Inverts at manholes;
- e. Slope;
- f. Flow Direction;
- g. Diameter (dimensions if not cylindrical);
- h. Type (e.g. gravity or pressure);
- i. Material (if available);
- j. Nominal capacity (i.e. Manning) design;
- k. Geographical location; and
- l. Interconnections with other municipalities and authorities.

6. Display attribute data for structures including:
  - a. Structure type (e.g. siphon, manhole, junction box, force main, air relief valve);
  - b. Invert elevation;
  - c. Geographic location; and
  - d. Age.

Defendant shall certify that it has developed an IMS that is adequate to track SSOs and SSDs, to identify known existing and potential sources of SSOs and SSDs and to maintain and manage the information necessary to operate and maintain Defendant's Collection System to eliminate SSOs and SSDs and avoid future SSOs and SSDs. Upon implementation of the IMS, Defendant shall certify by letter to EPA and the Department that the IMS is fully functioning. Defendant shall report on its progress toward compliance in the Annual Report required pursuant to Paragraph 41 of this Consent Decree.

13. Supervisory Control and Data Acquisition ("SCADA") system

- a. Defendant shall develop and implement a plan for a SCADA system consisting of an electronic monitoring system for the monitoring and control of the Facility and Collection System. At a minimum, the SCADA system shall provide for monitoring influent or effluent flow metering data and alarms at all pump stations, influent and effluent flow metering at the Facility, and treatment unit processes at the Facility. The schedule shall provide for installation of the SCADA system in accordance with the following:

1. Within one year of the Date of Lodging, install SCADA (including Facility control panel and telemetry) at four pump stations chosen by the Defendant based upon the Defendant's engineers' assessment of performance and reliability of all of the pumping stations in Defendant's system.

2. Within two years of the Date of Lodging, install SCADA (including telemetry and interface with the Facility control panel) at four additional pump stations chosen by the Defendant based upon the Defendant's engineers' assessment of performance and reliability of all of the pumping stations in Defendant's system.

3. Install SCADA (telemetry and interface with Facility control panel) at the remaining pump stations in accordance with the Plan of Action (V.B.11.) and the Capital Improvement Plan (V.D.25.) schedules or within three years of the Date of Lodging, whichever occurs sooner.

4. Defendant's engineers determine the stations at which the SCADA will be installed based solely on the performance and reliability of the existing stations. Defendant's engineers shall not consider cost in making this determination.

5. Within eighteen months of the Date of Lodging, install SCADA (including telemetry and interface with Facility control panel) for monitoring sludge handling units at the Facility (sludge levels within the digesters, sludge blankets in the primary and secondary clarifiers and amount of waste sludge removed from the Facility for disposal).

6. Install SCADA (including telemetry and interface with Facility control panel) for all treatment unit processes at the Facility in accordance with the Plan of Action (V.B.11.) and the Capital Improvement Plan (V.D.25.) schedules or within ten (10) years of the Date of Lodging, whichever comes sooner.

14. Reserved

15. Pump Station Maintenance Plan

a. For each Pump Station, Defendant shall develop and submit for review, in accordance with Section VIII, a Preventive Maintenance program appropriate to the type, size and permitted capacity of the Pump Station which includes the following elements:



1. For each Pump Station in its sewer system, Defendant shall provide for: adequate inventory of equipment, pumps and motors; appropriate, necessary and periodic servicing and calibration of Pump Station instrumentation; periodic inspection of the Pump Station; and periodic servicing of all Pump Station equipment.

2. All Preventive Maintenance and repair activities undertaken at any Pump Station shall be documented and tracked under the automated IMS system, when such system becomes operational. Prior to the IMS system completion, such activities shall be tracked manually.

3. Defendant shall maintain and periodically review and update Pump Station standard operating procedures (“SOPs”) for each of its Pump Stations, appropriate in detail and format to the type, size and permitted capacity of the particular Pump Station. For purposes of this provision, if any physical or operational changes are made at a Pump Station, the periodic review and update of the SOP shall occur no later than ninety (90) days from completion of the physical change or initial implementation of the operational change in question.

4. Defendant shall prioritize the evaluation of those Pump Stations that have been identified by the Defendant as hydraulically overloaded in accordance with ¶ 24, infra, as well as those specifically identified by the Department as hydraulically overloaded in the Department’s April 1, 2008 review of the Bristol Township 2006 Chapter 94 Report, attached hereto as **Appendix “A.”** These pump stations include the Silver Lake, Palmer Avenue, Delaware Avenue, College Park, and Beaver Dam Road pump stations, and any other places found to be hydraulically overloaded.

16. Operation and Maintenance Plan

Within two years of the date of lodging of the Consent Decree, Defendant shall develop and submit to EPA and the Department for review, in accordance with Section VIII, a system-wide, comprehensive Operation and Maintenance (“O&M”) Plan for the Facility and the

Collection System that will provide for the proper operation and maintenance of equipment while minimizing failures, malfunctions, and line blockages that could contribute to SSOs due to lack of adequate preventive care. The O&M Plan shall, at a minimum, provide for the achievement and maintenance of compliance with all applicable permits, laws, and regulations. The Plan shall include an identification of existing key processes and assessment of the vulnerability of each such process from human caused (both internal and external) threats, and from natural threats. A process shall be considered key if its failure or malfunction may endanger human or aquatic health. The Plan shall detail a method for monitoring each process, such as by inspection and/or SCADA monitoring, to inform personnel of a malfunction or failure within each such process. Preventive and emergency maintenance procedures shall be detailed for all identified key processes including the spare parts inventory required and vendor information for obtaining critical parts. As part of the identification of each key process, Defendant shall assess the vulnerability of said processes and the associated life-span of each item of electrical and mechanical equipment. Defendant shall develop SOPs for sampling procedures, record keeping, daily and weekly maintenance, sludge management and annual inspection and assessment of key processes and related equipment. Defendant shall develop a plan for employees to be trained in the new operation and maintenance plan as well as a schedule and plan for refresher training. Defendant shall also assess the need for provision of commonly required spare parts, and the lead time generally needed to obtain such parts. Additionally, Defendant shall create and maintain an adequate spare parts inventory for servicing key processes and/or have contracts in place for timely repairs by reputable contractors. Upon approval by EPA and the Department, Defendant will immediately implement this O&M Plan.

17. Interim High Flow Maintenance Plan Defendant shall submit to EPA and the Department, for review, in accordance with Section VIII, an interim wet weather operational strategy, or Interim High Flow Maintenance Plan, that includes both the Facility and the Collection System. Defendant shall implement this Interim High Flow Maintenance Plan in

accordance with the proposed schedule therein. This strategy shall provide for maximizing the flow to and through the Plant while minimizing the washout of solids throughout the treatment process. This strategy shall include process monitoring during periods of wet weather flow. The data compiled during this operation shall be used for an annual evaluation and modification of the wet weather strategy, which must be included in the Annual Report.

18. Interim Plant Improvement Plan Defendant shall submit an interim plant improvement plan, as further described below, to the EPA and the Department, for review and approval in accordance with Section VIII of this Decree. This plan shall be a revision to the capital improvements schedule in Defendant's report entitled "Evaluation of Existing Bristol Township Sanitary Sewer Facilities," approved by the Department in December 2006 and attached hereto as **Appendix "B."** Defendant shall provide a revised construction schedule of this work to be completed such that items previously scheduled for fiscal year 2008-2009 will be completed within twelve (12) months of the Date of Lodging of this Consent Decree, except that improvements to the I-95 Pump Station will be completed within 2 years. Upon approval by EPA and the Department, in accordance with Section VIII of this Decree, Defendant shall immediately implement this plan and construction schedule.

- a. In addition, beginning with the Annual Report and continuing for every twelve (12) month period, Defendant shall provide a summary of the tasks that have been completed pursuant to **Appendix "B."**

19. Sewer System Evaluation Survey

- a. SSES Work Plan. The EPA and Department acknowledge that Defendant has successfully conducted substantial inflow and infiltration ("I/I") work on the system and has expended significant sums to perform this work. Within one hundred and twenty (120) days of Consent Decree lodging, Defendant shall submit to EPA and the Department for review and approval, a Work Plan for continuing a Sewer System Evaluation Survey ("SSES") to: a) identify sewersheds where excessive I&I exists, such that these conditions are causing and/or

contributing to SSOs (including Public or Private Property Backups), overloading and/or Bypasses at the WWTP; b) identify and quantify sources within the sewersheds determined to have excessive I/I rates; c) identify and quantify the time period of occurrence and volume of SSOs; d) identify areas subject to Public/Private Property Backups; e) identify cross connections and unauthorized connections; and f) identify physical degradation of the Collection System, including general pipe condition and condition of force mains, that causes or contributes to SSOs (including Public/Private Property Backups):

b. The SSES shall involve the use of appropriate and accurate existing attribute data concerning the Collection System, and as necessary, the collection and use of additional physical attribute data for the Collection System; the use of verified existing rainfall and flow data, and as necessary, the collecting and use of additional flow data for the Collection System; the monitoring of WWTP flows and flows at key locations within the Collection System; the monitoring of groundwater and rainfall at appropriate locations throughout the Collection System; the physical investigation of the causes of I/I and SSOs, including Public/Private Property Backups; and the documentation of the condition of the portions of the Collection System causing or contributing to SSOs and specifically identifying portions of the Collection System causing or contributing to Building/Private Property Backups.

c. The SSES shall incorporate existing monitoring and characterization data only to the extent that it is of adequate quality and for locations appropriate for the purposes of the survey. The SSES Work Plan shall (a) identify all existing data to be utilized; (b) identify all additional data to be collected; (c) describe in detail how together the existing and proposed additional data will satisfy the objectives of the SSES; and (d) include a schedule for performing and completing a SSES that is as expeditious as possible within a maximum period of eighteen (18) months after submission of the SSES Work Plan.

d. The SSES Work Plan shall include a schedule for the expeditious installation of appropriate sewer flow, WWTP flow, groundwater level, and rainfall monitoring

equipment; completion of all monitoring activities by completing an expeditious review of all investigative activities; and for completing the analysis of the data collected and submitting an SSES Report to EPA and the Department no later than twenty four (24) months from Consent Decree lodging. Defendant shall implement the plan, in accordance with the schedule, upon submission of such plan and schedule to EPA and the Department.

e. To identify sources of excessive I/I, the SSES should be conducted by dividing the Collection System into appropriate sewersheds. Sufficient rainfall and flow data at key locations in each sewershed should be collected to allow the characterization of each sewershed's I/I contribution. In lieu of rainfall monitoring, Defendant may use valid rainfall data collected by other sources as long as such data was collected according to sound engineering practice and has been properly quality assured and quality controlled. Examples of such rainfall data sources are the National Oceanic and Atmospheric Administration ("NOAA"); United States Geological Survey ("USGS"); and local airport rain gauge data. All sewersheds should then be prioritized, based on I/I contribution and wet weather peaking factors, and subsequent investigations carried out in a sufficient portion of the Collection System to allow the preparation of a Collection System and WWTP Remedial Measures Plan (as described in Sub-Section V.F) that has the goal of eliminating all SSOs, including all Public/Private Property Backups

f. Investigative activities, such as CCTV inspection should focus on portions of the Collection System that cause or contribute to SSOs, including those portions subject to Public/Private Property Backups.

g. The SSES shall include (and the SSES Work Plan shall describe) at a minimum the following requirements:

1. Data Management: A description of the data management system that will organize, analyze, and report all existing data to be utilized and all of the data that Defendant will be collecting in accordance with this Paragraph;

2. Quality Control/Quality Assurance: A description of the quality assurance and quality control program Defendant will follow to ensure the accuracy and reliability of data collected or used in accordance with this Paragraph;

3. Data Review: A review of existing data concerning SSOs, sewage flows, WWTP and Collection System attributes (e.g., pipe diameters, pipe segment lengths, diversion structure characteristics, catchment characteristics, invert elevations, pipe interior roughness coefficients, etc.), and rainfall and groundwater levels; and an evaluation of the accuracy, completeness and adequacy of that data for purposes of supporting the characterization of the Collection System's condition and sources of extraneous wet weather flow. The data review will further identify all additional data needed to allow the SSES to satisfy the objectives stated herein;

4. Rainfall and Flow Monitoring: As part of the SSES, Defendant shall carry out all additional dry and wet weather rainfall flow monitoring as needed to satisfy the requirements of this Paragraph. Where the review of existing data under Paragraph 19.c above, is adequate to satisfy the requirements of this Consent Decree, Defendant may use such data to complete both this SSES and the Collection System Rehabilitation required by Section E, in lieu of the collection of new and additional data. Dry weather monitoring shall be carried out so as to allow the characterization of base flows and Infiltration rates. Wet weather monitoring shall be carried out following wet weather events of sufficient duration and intensity to cause significant I/I in the system to allow the collection of sufficient rainfall and flow monitoring data, to allow the prioritization of sewersheds described above, and to support the development of Collection System Rehabilitation required by Section E. The locations, types and rationale for placement or use of rain gauges, flow monitors, and any other equipment required by this Section and a discussion of how Doppler radar will be employed (if appropriate) shall be included in the SSES Work Plan.

5. Rainfall Gauges: To monitor the contribution from rainfall to a sewershed within Defendant's jurisdictional boundaries, Defendant shall use a network of rain gauge stations in accordance with industry standards and sound engineering practice. Defendant may use rainfall data collected by others as described in Paragraph 19.e.

6. Flow Monitoring: Flow data shall be collected using a system of permanent and/or temporary flow monitors placed at locations in the Collection System necessary to allow the characterization of flow from each sewershed service area. Defendant shall inspect, maintain, and calibrate (if necessary) all flow monitors at least once per week.

7. The rainfall and flow monitoring network shall be designed, installed, operated, and maintained to provide representative, accurate, and precise data of sufficient quality for at least ninety (90) percent of the scheduled operation time for each meter.

h. Defendant's flow and rainfall monitoring network shall be designed, installed, operated and maintained to provide representative data of sufficient quality for use in the development of Collection System Rehabilitation as required by Section E. Monitoring site selection, equipment selection and installation, calibration, maintenance, and data quality assurance checks shall all be carried out to optimize monitoring accuracy, and shall all conform with the equipment manufacturers' recommendations and current, good engineering practice. The flow monitoring and rainfall data shall be used to prioritize the sewersheds for further flow monitoring and physical investigation activities, as described below.

i. Defendant shall perform further investigative activities in sewersheds determined to have excessive I&I and any determined to cause or contribute to SSOs, Bypasses and/or overloading at the WWTP and/or Building/Private Property Backups. The investigative activities shall locate and allow estimation of the wet weather flows associated with individual sources of I&I, or shall identify physical degradation of the Collection System that causes or contributes to SSOs including Building/Private Property Backups. The investigative activities shall include, as appropriate:

1. Further flow monitoring to isolate sources of I&I. Such flow monitoring will be carried out as specified above in this Paragraph;

2. Smoke testing;

3. Visual inspections of pipes and manholes;

4. Dye testing;

5. Night flow isolation;

6. CCTV inspection to identify sewers in need of repair, rehabilitation, or replacement; and

7. Building inspections.

j. These further investigative activities shall be sufficient to allow detailed characterizations of all significant sewer defects in sewersheds with excessive I/I, SSOs, including sewersheds with Public/Private Property Backups, and to support the development of the Collection System Rehabilitation and the identification of all remedial measures necessary to satisfy the objectives of the Collection System Rehabilitation Plan.

k. Defendant shall perform the SSES and any further investigative activities in accordance with the guidance provided in the appropriate sections of the *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991 (“EPA Handbook”) (unless that EPA Handbook is replaced or superseded by other Agency guidance or regulations, in which case the replacement or superseding guidance or regulations shall be used); the National Association of Sewer Service Companies “Manual of Practice”; and sound engineering practice. The aforementioned documents are intended to provide guidance on the methodologies and techniques to be used in identifying sources of I/I, however, that guidance shall be applied in a manner consistent with the purpose of eliminating SSOs, including all Public/Private Property Backups.



C. **ADDITIONAL INTERIM MEASURES**

20. **Responses to the Occurrence of an SSD at a Pump Station** If any SSD occurs at a Pump Station, Defendant shall notify the Department immediately, and Defendant shall conduct an analysis to determine the cause of the SSD. In addition, Defendant shall immediately take or cause to be taken steps necessary to prevent injury to property and to downstream users of the affected waters of the U.S. and the Commonwealth from pollution or a danger of pollution, and, in addition thereto, within fifteen (15) days from the incident shall remove from the ground and from the affected waters the residual substances contained thereon and therein. If the Defendant determines that the SSD was due to inadequate capacity or design deficiencies of the Pump Station, then within ninety (90) days of the SSD occurrence, Defendant shall submit an amended Pump Station Maintenance Plan pursuant to Paragraph 15 with a plan and schedule for the completion of appropriate corrective measures to EPA and the Department for their review and approval.

21. **Staffing**

a. Immediately upon the Date of Lodging of this Consent Decree, Defendant shall submit a staffing plan to Plaintiffs that shall provide for a certified operator to be continuously present at, or in contact with, the Facility at all times. The staffing plan will also address the specific duties of each certified operator and staff member, including which other certified operator or staff member(s) shall be responsible for performing duties if the regular certified operator or staff member is unavailable. Said plan shall further describe the communication processes between certified operators, treatment plant and municipal management, and contractors or engineers that are responsible for facility design, operation and maintenance to assure efficient and effective management of the facilities operations and maintenance. Within twelve (12) months from the Date of Lodging, the Defendant shall hire a sufficient number of staff, including certified operators, in a number adequate to perform all O&M activities on a daily basis in accordance with standard operating procedures.

b. Every Annual Report shall include an evaluation of the staffing plan, specifically, how successfully the existing staff has operated and maintained the Plant and Collection System, has implemented the requirements of the Consent Decree, and how the staff needs to be expanded or reorganized to properly operate the Plant and Collection System and to implement the future requirements of the Consent Decree.

22. Connection Management The Defendant shall continue to place limitations on and control new connections to the overloaded sewerage facilities according to a Connection Management Plan (“CMP”), which shall be submitted to the Department for its review and approval. The CMP shall be submitted within 90 days of the Consent Decree lodging. Any changes to the approved CMP may be requested in the Annual Reports to Plaintiffs or more frequently, if necessary. All changes to the CMP must be approved in writing by the Department.

D. **LONG TERM EVALUATION AND CONSTRUCTION SCHEDULE**

23. Pump Station Maintenance Plan Defendant shall prioritize the implementation of the corrective work evaluated in paragraph 15 (Pump Station Maintenance Plan) of this Consent Decree, for those Pump Stations that have been identified by the Defendant as hydraulically overloaded and including those specifically identified by the Department as hydraulically overloaded in the Department’s April 1, 2008 review of the Bristol Township 2006 Chapter 94 Report, attached hereto as **Appendix “A”**. These pump stations include the Silver Lake, Palmer Avenue, Delaware Avenue, College Park, and Beaver Dam Road pump stations, and any other places found to be hydraulically overloaded.

24. Pump Station Annual Review Defendant shall re-evaluate its Pump Stations annually to assure that each Pump Station is of sufficient size and capacity to handle expected waste water flows. The results of the re-evaluations shall be reported to EPA and the Department in the Annual Report which is to be submitted under Section VI of this Consent

Decree. Modifications to the Pump Station Maintenance Plan shall be made, as necessary, at the request of EPA and the Department.

25. Facility and Alternatives Submission Within one hundred and eighty (180) days of approval of the POA, Defendant shall provide for review and approval a detailed evaluation of the need for capital expenditures, and further provide preliminary estimates of such capital expenditures in accordance with the elements below.

a. Existing Plant Process Evaluation Report Defendant shall perform an evaluation of existing plant processes and submit to EPA and the Department a report that describes the Defendant's evaluation of the treatment capacity of the existing facility and identify the enhancements required to be made to the existing facility in order to meet current and anticipated regulatory requirements. This evaluation shall include:

1. Process Control Testing and unit efficiency monitoring;
2. Characterization of the existing influent wastewater;
3. Waste load projections taking into account the impacts of the industrial pretreatment program and satellite communities and treatment capacity;
4. Process modeling of the existing liquid process treatment train; and
5. Evaluation of the existing process capabilities to meet existing and future load and nutrient limits.

b. Evaluation of Treatment Facilities Alternatives Defendant shall complete a review, including preliminary cost estimates, of alternative treatment systems that effectively meet existing and future needs and anticipated regulatory requirements. Defendant shall identify in this evaluation its selected alternative(s) among the alternatives discussed and describe the basis for such preferences. The alternatives to be evaluated shall include, but shall not be limited to, increasing sewage flows, decreasing sewage flows, and maintaining existing sewage flows from Bristol Township at the Bristol Borough WWTP, at the Lower Bucks Joint Municipal Authority WWTP, and into the Bucks County Water and Sewer Authority conveyance system

for treatment at the City of Philadelphia's WWTP. For any proposed changes in flow, Bristol Township must obtain approval from the permittees of all affected facilities.

1. Evaluation of Treatment Alternatives Report Defendant shall submit a report which shall include an analysis of the cost of new construction versus the cost of modifying existing facilities for EPA and the Department's review and analysis. The report shall also include the following elements:

2. Sizing Evaluation of Existing Treatment Facilities Defendant shall evaluate the sizing of the existing liquid process and solids handling facilities. If Defendant finds these adequately sized, Defendant may propose a solution to optimize the facilities as described in subparagraph 2, below. Defendant shall also perform an evaluation of new treatment facilities as described in subparagraph 3, below.

3. Optimization of Existing Treatment Facilities

a. Liquid Process Facilities Defendant shall evaluate the existing liquid process facilities, describe how to optimize current facilities, and develop cost estimates addressing the rehabilitation of existing liquid treatment process units required to meet effluent limits. As part of that evaluation, Defendant shall perform a hydraulic evaluation to determine the hydraulic limitations of the existing facility.

b. Solids Handling Facilities Defendant shall evaluate all existing solids handling facilities to determine the treatment efficiency and capacity of solids handling equipment. This report will include evaluation of capacity limitations and cost estimates to increase capacity to meet future needs based on current waste load projections. This report shall also include a review and evaluation of Defendant's solids handling operational procedures and include

recommendations for optimizing the operations of the existing equipment.

26. Capital Improvements Plan Upon approval by EPA and the Department of the treatment alternative(s), Defendant shall develop and submit a capital improvements plan, as provided below in subparagraphs a.1. – 3., to Plaintiffs for review and approval in accordance with Section VI of this Decree. This plan shall include the capital cost and budgetary impact for implementation of the recommended alternative submitted by Defendant and approved by Plaintiffs as described in Paragraph 25.b. above.

a. The scope of the Capital Improvements Plan shall encompass the approved conclusions of the “Evaluation of Treatment Alternatives Report” described in Paragraph 25.b. above.

1. If an upgrade of the existing facility is the selected alternative, a full facility audit of the plant infrastructure will be completed including plant inventory of structural, electrical and mechanical components, and their life expectancy. This facility audit will be submitted within six (6) months of the approval of the selected treatment alternative.

2. If utilization of a combination of new and existing equipment is the approved alternative, an audit of the equipment and facilities to be reused shall be performed. This partial facility audit shall be submitted within six (6) months of the approval of the selected treatment alternative.

3. If a new facility is the approved alternative, the interim plant improvement plan required as part of the POA shall be amended to summarize any additional upgrades that may be required to improve performance of the existing facility until start-up of the new plant. The amended interim plant improvement plan shall be submitted in the next Semi-Annual Report.

27. Request for Proposals By no later than three (3) months from the Plaintiffs’ approval of the Capital Improvement Plan, the Defendant shall seek proposals through its request

for proposal (RFP) process pursuant to the Charter and Municipal Ordinances and any other procedures required by regulation or law.

28. Permit Applications and Design Consistent with the implementation schedule in the approved POA and Capital Improvements Plan, but no later than January 1, 2012, the Defendant shall complete and submit to the Department the NPDES (Part I) and the Water Quality Management (Part II) Permit applications, as necessary, to implement the approved treatment alternative described in the Capital Improvements Plan. In the event that the Department or the EPA fails to respond to the POA or the Capital Improvements Plan within 120 days and that failure is not due to the incompleteness of the Township's submission, the Township will be entitled to an extension of the January 1 deadline equal to the number of days by which the Department or the EPA exceeded 120 days. The applications shall include among other items all the design, architectural and engineering plans and information necessary to secure permits, receive bids and construct the Treatment Alternative submitted by Defendant and approved by Plaintiffs. Defendant shall also obtain other approvals and/or permits as necessary including but not limited to: NPDES permits; permits for Construction and/or Earthmoving permits pursuant to 25 PA Code Chapter 102; and, if necessary, a permit for water obstruction/wetlands pursuant to 25 PA Code Chapter 105 and/or a permit issued under Section 404 of the Clean Water Act.

29. Construction Completion

a. If a new treatment plant is to be constructed, Defendant shall complete construction by no later than January 15, 2015.

b. For upgrade and/or expansion at the existing location, Defendant shall complete construction by no later than January 15, 2015.

30. Start-Up & Operation

a. The Defendant shall complete start-up and operation of the plant improvements within three (3) months of construction completion.

- b. Defendant shall achieve final compliance with all NPDES permit requirements within six (6) months of start-up and operation.
- c. Defendant shall notify the Department and EPA within thirty (30) days of completion construction.

**E. COLLECTION SYSTEM REHABILITATION**

31. Rehabilitation Plan By no later than January 15, 2012 and consistent with the results of the Sewer System Evaluation Survey, the Defendant shall develop and submit to Plaintiffs a Rehabilitation Plan to adequately address those specific priority areas of the sanitary sewer system that require repair, replacement, upgrade and/or other remediation. Defendant shall submit the “Rehabilitation Plan” to EPA and the PADEP for review and approval in accordance with Section VIII of this Decree. This Plan shall serve as the basis for Defendant’s implementation of the sanitary sewer system collection system rehabilitation required by Paragraph 32 of this Decree.

32. Rehabilitation of Priority Areas of Collection System By no later than January 15, 2015 and in accordance with the approved Rehabilitation Plan described in Paragraph 31 of this Decree, the Defendant shall complete the recommendations set forth in that Plan for repair, replacement, upgrade and/or other remediation of the priority areas.

**F. HIGH FLOW MAINTENANCE PLAN**

33. High Flow Maintenance Plan By no later than eighteen (18) months from the Date of Lodging, the Defendant shall develop and submit and implement a “High Flow Maintenance Plan” and a schedule for implementation to EPA and PADEP. The High Flow Maintenance Plan shall set forth how to operate the treatment plant and the Collection System during wet weather events to maximize treatment and prevent sanitary sewer overflows (SSOs) or bypasses. This Plan shall build on and update the development of the Interim High Flow

Maintenance Plan described above at Paragraph 17 of this Consent Decree. The High Flow Maintenance Plan shall adequately address any comments from EPA and PADEP on the wet weather operational strategy. The High Flow Maintenance Plan shall also provide for and include a log of any SSO events which identify the nature of the storm events, the locations of the SSO discharges, and the duration and estimated volume of the SSO discharges. Upon review and comment from EPA and the Department, the Defendant shall address the comments and, if necessary, change the High Flow Maintenance Plan accordingly.

G. **PRETREATMENT PROGRAM**

34. Defendant shall not accept non-domestic wastewater from industrial users that causes pass through or interference at the Facility and/or that does not comply with local limits.

35. Within six (6) months from the Date of Lodging, the Defendant shall have on its staff a qualified pretreatment coordinator who shall be in charge of and be responsible for the pretreatment program. From that time forward, the Defendant shall continue to retain a qualified pretreatment coordinator with such power and responsibility. Should such pretreatment coordinator cease to be retained or employed by the Defendant, the Defendant shall advertise the position internally and externally immediately and shall hire a new pretreatment coordinator not later than six (6) months following the conclusion of the prior coordinator's employment or retention.

36. The Defendant shall implement its current Enforcement Response Plan ("ERP"), attached as **Appendix E**, to address Industrial User ("IU") noncompliance. After the Defendant assesses any penalties and/or a compliance schedule, if such IUs remain in Significant Non-Compliance ("SNC"), or the IU does not agree to a reasonable compliance schedule and/or penalty consistent with the ERP, then the Defendant shall escalate its response in accordance with the current EPA approved ERP, including issuance of an administrative order by the



Defendant, the assessment of a penalty, the revocation of the local permit and/or referring the IU to EPA for additional enforcement action.

37. For any IU that is a frequent violator of any pretreatment standards (including approved local limits), Defendant shall require more frequent monitoring in accordance with Defendant's approved pretreatment program. If necessary, the Defendant shall amend or reissue an existing IU permit to increase the frequency of self-monitoring for the pollutants of concern. Defendant shall require such sampling to commence within ninety (90) days of the Date of Lodging.

38. Pretreatment Computerized Management System Plan To improve tracking of document submission violations, required re-sampling, and compliance milestones and aid in assessment of SNCs, Defendant shall commit to developing and implementing a computerized management system plan for the pretreatment program which plan incorporates Defendant's approved pretreatment program. Defendant shall submit a Pretreatment Computerized Management System plan and implementation schedule to EPA within ninety (90) days of the Date of Lodging of the Consent Decree. The computerized management system plan shall ensure full and complete compliance with the pretreatment requirements set forth in the CWA, the implementing regulations thereto, and Defendant's approved pretreatment program, including, but not limited to, the terms and conditions of Defendant's NPDES Permit. Upon approval of the plan by EPA, Defendant shall implement the computerized management system plan in accordance with the approved implementation schedule. This system shall be on-line and fully functional within three (3) months of implementation.

39. By no later than six (6) months from the Date of Lodging of this Consent Decree, the Defendant shall complete its reevaluation of local limits as required by the current NPDES permit and submit that reevaluation to EPA for review and approval. The Defendant shall require that all contributing member municipalities adopt local limits by ordinance within one (1) year of EPA acceptance of revised or new local limits. If any such municipality has not adopted

all current local limits within one (1) year from the Date of Lodging, then the Defendant shall take further action to compel the contributing municipality to formally adopt the local limits ordinance. These further actions may include equitable enforcement of the inter-municipal agreement requesting injunctive relief, damages, penalties, attorney's fees, and other costs that may be incurred by Defendant in compelling compliance and/or any other penalties allowable under state or federal law.

40. The Defendant shall report semi-annually on which IUs are in SNC and identify all violations. This report shall also include all monitoring results, and copies of enforcement actions taken, and penalties issued, assessed and collected pursuant to the ERP. One such report shall occur in the Annual Report, and copies of both reports shall be submitted to the Pretreatment Coordinator, EPA Region 3, 1650 Arch St., Philadelphia, PA 19103-2029.

## **VI. REPORTING REQUIREMENTS**

41. Beginning March 31, 2011, Defendant shall submit to EPA and the Department and before March 31 of each year until termination of this Consent Decree, an Annual Report ("Annual Report") of all subjects required to be in the Annual Report pursuant to this Consent Decree, including, but not limited to: the interim wet weather operational strategy; the interim plant improvement plan; the connection management plan; the pump station annual review; and a list of SIUs in SNC. In addition, the Annual Report shall include any updates or changes to the POA as well as a list of all SSDs and SSOs, occurring in the system in the preceding year, which identifies, where available, the frequency, date, duration and volume of SSOs and SSDs, the magnitude of each rainfall event, and the cause or condition which contributed to each event.

42. This Annual Report shall also contain the following:

a. Progress reports on the implementation of the requirements of Section V (Remedial Measures) as described in Paragraphs 7 through 40;

b. A description of any problems anticipated with respect to meeting the requirements of Section V (Remedial Measures) of this Consent Decree;

c. Updated POA Reports, which shall include, but not be limited to, the status of the corrective actions conducted or completed in the past twelve (12) months and the work anticipated to occur in the following twelve-month period, the number of connections made during the year, a chart listing all projects that have received certification of capacity for planning module revision and the allocations per year, and a chart of all projected connections by Defendant; and

d. Any such additional matters as Defendant believes should be brought to the attention of EPA and the Department.

43. The Annual Reports shall be certified, consistent with the requirements of 40 C.F.R. 122.22(a)(3), by the person responsible for compliance or by a person responsible for overseeing implementation of this Consent Decree, who shall state:

“I certify under penalty of law that this information was 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 directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.”

## **VII. RIGHT OF ACCESS**

44. EPA and the Department, and their authorized representatives and contractors, shall each have authority at all reasonable times, upon the presentation of credentials, to enter the property of Defendant to:

- a. Monitor the progress of activities required by this Consent Decree;
- b. Verify any data or information submitted to the United States and Commonwealth of Pennsylvania;
- c. Obtain samples;

- d. Observe performance tests;
- e. Inspect and evaluate any portion of the Collection System; and
- f. Review and copy any record required to be kept under the terms and conditions of this Consent Decree.

45. Upon request, Defendant shall provide EPA or the Department or their authorized representative(s) splits of any samples collected by Defendant or its consultants and contractors. Upon request, EPA or the Department shall provide Defendant splits of any samples collected by EPA or the Department.

46. These inspection rights are in addition to, and in no way limit or otherwise affect, EPA's and the Department's statutory authorities to conduct inspections, to require monitoring and to obtain information from Defendant as authorized by law.

#### **VIII. REVIEW AND APPROVAL PROCEDURES**

47. After receipt and review of any plan, program or other document which is required to be submitted for approval pursuant to this Consent Decree, EPA and the Department may (1) approve, in whole or in part, the submission; (2) approve the complete submission or portions of the submission upon specified conditions; (3) disapprove the submission, in whole or in part, and direct that Defendant modify the submission; or (4) any combination of the above. The EPA and Department will have 120 days in which to review each such plan, program or other document and respond to it, which time period will be anticipated by the Township in its planning process. In the event that the Department or the EPA fails to respond within 120 days and that failure is not due to the incompleteness of the Township's submission, the Township will be entitled to an extension of time for each affected obligation equal to the amount by which the Department or the EPA exceeded 120 days.

48. In the event of approval of the complete submission, Defendant shall proceed to take any actions required by the plan, program or other approved document, as approved by EPA and the Department.

49. In the event of approval of portions of the submission or approval upon specified conditions, Defendant shall proceed to take the actions identified in the non-deficient portion of the plan, program, other document, or portion thereof, in accordance with any applicable conditions specified by EPA and the Department, subject only to Defendant's right to invoke the Dispute Resolution procedures set forth in Section XII with respect to the conditions imposed. Implementation of any non-deficient portion of the submission shall not eliminate the potential of Defendant to incur stipulated penalties pursuant to Section X.

50. Upon receipt of a notice of disapproval of all or part of a submission from EPA and the Department, Defendant shall, within thirty (30) days (or such greater time frame as specified by EPA and/or PADEP in writing), correct the deficiencies as directed by EPA's and the Department's written comments and resubmit the plan, program or other document for approval. Any stipulated penalties applicable to the submission, as provided in Section X, shall accrue during the 30-day period, but shall not be payable unless the resubmission is disapproved as provided in Paragraph 49.

51. In the event that a resubmitted plan, program or other document, or portion thereof, is disapproved by EPA and the Department, EPA and the Department may again require the Defendant to correct the deficiencies in accordance with this Section. Unless Defendant invokes the Dispute Resolution Procedures set forth in Section XII and EPA's and the Department's disapproval of the Defendant's resubmission is overturned pursuant to that Section, Defendant shall be deemed to have failed to submit such program, plan or other document timely and adequately and stipulated penalties shall accrue for such violation from the date on which the initial submission was originally due.

52. All programs, plans or other documents required to be submitted pursuant to this Consent Decree shall become incorporated into and enforceable under this Consent Decree, upon EPA's and the Department's approval. In the event EPA and the Department approve a portion of any program, plan or other document pursuant to this Section, then the approved portion shall become incorporated into and enforceable under this Consent Decree.

### **IX. CIVIL PENALTY**

53. Defendant shall pay a total civil penalty in the amount of \$226,000 to the United States and the Commonwealth for violations as alleged by the United States and the Commonwealth in the Complaint. Defendant shall pay twenty-five percent (25%) of the total civil penalty to the United States within thirty (30) days of the Date of Lodging of this Consent Decree in accordance with the procedures described in Paragraph 55, below. Defendant shall pay twenty-five percent (25%) of the total civil penalty to the Commonwealth within thirty (30) days of the Date of Lodging in accordance with the procedures described in Paragraph 56, below. Defendant shall pay twenty-five percent (25%) of the total civil penalty, plus interest at the post-judgment interest rate applicable on the Date of Lodging of this Consent Decree, to the United States within twelve (12) months of the Date of Lodging of this Consent Decree in accordance with the procedures described in Paragraph 55, below. Defendant shall pay twenty-five percent (25%) of the total civil penalty, plus interest at the post-judgment interest rate applicable on the Date of Lodging of this Consent Decree, to the Commonwealth within twelve (12) months of the Date of Lodging in accordance with the procedures described in Paragraph 56, below.

54. The United States and the Commonwealth shall be deemed judgment creditors for purposes of collection of this penalty.

55. Payment of the civil penalty to the United States shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice ("DOJ") lockbox bank, referencing

DOJ No 90-5-1-1-4402/2. Payment shall be made in accordance with instructions provided by the United States to Defendant following execution of this Consent Decree. Any EFT received at the DOJ lockbox bank after 11:00 A.M. Eastern Time will be credited on the next business day. Notice of the EFT shall simultaneously be mailed to the following:

Docket Clerk (3RC00)  
U.S. EPA - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Pamela J. Lazos (3RC20)  
U.S. EPA - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029; and

Margaret L. Hutchinson  
Chief, Civil Division Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106-4476  
Re: DOJ No. 2008-V00444

The transmittal letter forwarding such notice shall include the caption, civil action number and judicial district of this action.

56. Payments to the Commonwealth of Pennsylvania shall be made by tendering to the Pennsylvania Department of Environmental Protection checks made payable to: “Commonwealth of Pennsylvania” and sent to:

Steve O’Neil  
Pennsylvania Department of Environmental Protection  
2 East Main Street  
Norristown, PA 19401

57. If Defendant fails to tender all or any portion of the civil penalty payment owed to the United States within thirty (30) days of the Date of Lodging of this Consent Decree interest on the unpaid amount shall accrue in accordance with the provisions of 28 U.S.C. § 1961 from the date of the original payment until all amounts owed are paid. If Defendant fails to tender all or any portion of the civil penalty payment owed to the Commonwealth of Pennsylvania within

thirty (30) days of the Date of Lodging of this Consent Decree interest on the unpaid amount shall accrue in accordance with the provisions of 41 Pa. C.S. § 202 from the date of the original payment until all amounts owed are paid.

**X. STIPULATED PENALTIES**

58. Defendant shall pay stipulated penalties for each failure to comply with the terms of this Consent Decree, including the terms of any plans or schedules developed pursuant to and incorporated into this Consent Decree. The stipulated penalties shall be assessed as follows and paid 50% to the United States and 50% to the Commonwealth as set forth in Paragraph 55 and 56 of this Decree:

59. Stipulated Penalties for Failure to Comply with Various Provisions of this Consent Decree Defendant shall pay stipulated penalties in the amount set forth below for each day it fails to meet any of the project milestone dates set forth in Section V. Remedial Measures, of this Consent Decree, for each failure to satisfactorily perform in accordance with the requirements under the Consent Decree, and for each late submission:

<u>Period of Non-Compliance</u>	<u>Penalty per Milestone Date per day of Violation</u>
1 <sup>st</sup> to 15 <sup>th</sup> Day	\$ 500
16 <sup>th</sup> to 30 <sup>th</sup> Day	\$ 1,000
31 <sup>st</sup> to 60 <sup>th</sup> Day	\$ 2,000
After 60 Days	\$ 5,000

60. Stipulated Penalties for NPDES Permit Violations Beginning on the Date of Lodging, Defendant shall pay a stipulated penalty for each NPDES Permit Violation in the amount set forth below.



Type of Violation : Daily/Instantaneous

Penalty Per Day or Excursion	Period of Noncompliance
\$ 100	1 <sup>st</sup> through 12 <sup>th</sup> Month
\$ 200	13 <sup>th</sup> through 24 <sup>th</sup> Month
\$ 300	25 <sup>th</sup> Month and Beyond

Type of Violation: Weekly Average

Penalty Per Violation Per Week	Period of Noncompliance
\$ 100	1 <sup>st</sup> through 12 <sup>th</sup> Month
\$ 200	13 <sup>th</sup> through 24 <sup>th</sup> Month
\$ 300	25 <sup>th</sup> Month and Beyond

Type of Violation: Monthly Average

Penalty Per Violation Per Month	Period of Noncompliance
\$ 250	1 <sup>st</sup> through 12 <sup>th</sup> Month
\$ 500	13 <sup>th</sup> through 18 <sup>th</sup> Month
\$ 750	19 <sup>th</sup> through 24 <sup>th</sup> Month
\$ 2,500	25 <sup>th</sup> Month and beyond

61. Compliance Reporting Defendant shall pay stipulated penalties in the amount set forth below for each day it fails to submit any progress report other than one in Section V. Remedial Measures of this Consent Decree or information required to be included within a progress report required to be submitted pursuant to this Consent Decree.

<u>Period of Non-Compliance</u>	<u>Penalty per Element per Day of Violation</u>
1 <sup>st</sup> to 15	\$ 150
16 <sup>th</sup> to 30 <sup>th</sup> Day	\$ 300
31 <sup>st</sup> to 60 <sup>th</sup> Day	\$ 500
After 60 days	\$ 1,000

62. Stipulated Penalties for Sanitary Sewer Overflows (“SSOs”) Defendant shall pay stipulated penalties in the amount of \$1,000 for each SSO that occurs in the Sanitary Sewer Collection System.

63. Pretreatment Program Stipulated Penalties

Defendants shall pay 100% of the stipulated penalty to EPA:

a. For the first calendar quarter within three months after the Date of Lodging, for failure to enforce the pretreatment program according to the ERP against each Significant Industrial User (“SIU”) in SNC and for each such subsequent quarter: \$1,000 per SIU.

b. Beginning with the first calendar quarter within three months after the date of Lodging of this Consent Decree, failure to conduct and/or report quarterly influent, effluent and sludge monitoring, will result in the following stipulated penalties:

<u>Period of Non-Compliance</u>	<u>Penalty per Element per Day of Violation</u>
1 <sup>st</sup> to 15 <sup>th</sup> Day	\$ 200
16 <sup>th</sup> to 30 <sup>th</sup> Day	\$ 400
31 <sup>st</sup> to 60 <sup>th</sup> Day	\$ 600
After 60 days	\$ 1,200

64. Defendant shall pay 100% of the stipulated penalties to the EPA in the amount set forth below for each day it fails to submit its annual pretreatment report.

<u>Period of Non-Compliance</u>	<u>Penalty per Element per Day of Violation</u>
1 <sup>st</sup> to 15 <sup>th</sup> Day	\$ 150
16 <sup>th</sup> to 30 <sup>th</sup> Day	\$ 300
31 <sup>st</sup> to 60 <sup>th</sup> Day	\$ 500
After 60 days	\$ 1,000

65. Stipulated civil penalties shall automatically begin to accrue on the first day Defendant fails to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue until the violation or deficiency is corrected.

66. Stipulated penalties incurred by Defendant under this Consent Decree shall be due on or before the twenty-eighth (28<sup>th</sup>) day of each succeeding month. Stipulated Penalty payments for effluent violations shall be accompanied by a copy of the Discharge Monitoring Report (DMR) for that month.

67. Stipulated penalties incurred under this Consent Decree shall be due automatically and without notice, unless Defendant contests the penalty in accordance with the dispute resolution provisions of this Consent Decree. If Defendant invokes the dispute resolution provisions in Section XII of this Consent Decree, it shall deposit any disputed penalty in an interest-bearing escrow account within ten (10) days of invoking dispute resolution. The stipulated penalties that are the subject of the dispute, as well as interest earned thereon, shall be released in a manner consistent with the terms of the resolution of the dispute within sixty (60) days after the dispute is resolved. Stipulated penalties for any continuing violation shall accrue during the resolution of any dispute.

68. The stipulated civil penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States and the Commonwealth or their agencies by reason of Defendants failure to comply with the requirements of this Consent Decree, and all applicable federal, Commonwealth or local laws, regulations, or permits.

69. In the event that a stipulated civil penalty is not paid when due, the stipulated civil penalty owed to the United States and or the Department shall be payable with interest from the original due date to the date of payment at the statutory judgment rate set forth at 28 U.S.C. § 1961(a) with respect to the federal government and 41 Pa. C.S. § 202 with respect to the Commonwealth.

70. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to the United States under this Consent Decree. Any such reduction or waiver shall be without prejudice to any other penalty that is already, or later becomes, due. Defendant shall not rely on any such waiver or reduction being repeated with respect to any future penalty.

#### **XI. FORCE MAJEURE**

71. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of Defendant or the control of any entity controlled by Defendant, including their agents, consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant 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. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not, in any event, be considered "force majeure" events. In addition, failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree, or failure of Defendant to approve contracts, shall not, in any event, be

considered “force majeure” events. Defendant shall adopt all reasonable measures to avoid or minimize such delay.

72. Defendant shall notify EPA and the Department, in writing, within twenty (20) business days after Defendant first knew, or in the exercise of reasonable diligence under the circumstances, should have known of an event that might delay completion of any requirement of this Consent Decree, whether or not the event is a “force majeure” event. The notice shall provide a description of the event and an explanation of the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or mitigate the delay or the effect of the delay, the timetable by which those measures will be implemented, whether Defendant claims that the delay should be excused as a “force majeure” event, and its rationale for attributing such delay to a “force majeure” event if it asserts such a claim. Defendant shall include all available documentation supporting its claim that the delay was attributable to a “force majeure” event. Further, where a contractor or subcontractor has not completed a construction project on time, Defendant shall state what steps it is taking to ensure performance by the contractor or subcontractor in question, and shall supply any documentation available to show the steps it has taken.

73. Failure to provide the required written notice to EPA and the Department shall render this Section void and of no effect as to the event in question, and shall be a waiver of Defendant’s right to obtain an extension of time for its obligations based on such event. Defendant shall be deemed to have notice of any circumstance of which its contractors, or subcontractors had or should have had notice.

74. If EPA and the Department find that a delay in performance is, or was, caused by a “force majeure” event, the time for performance of the specific obligation(s) under this Consent Decree that are caused by the “force majeure” event shall be extended for a period to compensate for the delay resulting from such event, and stipulated penalties shall not be due for such period. EPA and the Department will notify Defendant in writing of the length of the

extension for performance of the obligation(s) caused by the “force majeure” event. An extension of time for performance of the obligation(s) caused by the “force majeure” event shall not, of itself, extend the time for performance of any other obligation. Defendant shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

75. In the event of a dispute regarding application of these provisions to a delay in performance, the dispute resolution provisions of Section XII (Dispute Resolution) shall apply, and Defendant shall have the burden of proving that the delay is, or was, caused by a “force majeure” event, and that the amount of additional time requested is necessary to compensate for that event. Defendant shall not be liable for stipulated penalties for any period of delay which was excused by the Court or EPA and the Department pursuant to this “Force Majeure” Section. However, pending resolution of a "force majeure" dispute, stipulated penalties will continue to accrue, and shall be due and payable if the Court determines that the event in question was not a "force majeure" event, that the Defendant did not undertake reasonable measures to limit the effect of the event, or that the "force majeure" event occurred for a shorter period of time than that alleged by Defendant.

## **XII. DISPUTE RESOLUTION**

76. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between Defendant and/or EPA or the Department arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States and the Commonwealth of Pennsylvania to enforce obligations of Defendant that have not been disputed in accordance with this Section.

77. Informal Dispute Resolution Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between

Defendant, EPA and the Department. The period for informal negotiations shall not exceed twenty (20) days from the time Defendant sends EPA and the Department a written Notice of Dispute, unless that period is modified by written agreement of Defendant, EPA and the Department. The Notice of Dispute shall clearly describe the matter in dispute. In the event the parties cannot resolve their dispute within the informal negotiation period, then the position advanced by EPA and the Department shall be considered binding unless, within 30 days of the conclusion of the informal negotiation period, Defendant invokes the formal dispute resolution procedures as set forth below.

78. Formal Dispute Resolution Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by filing with the Court and serving on EPA and the Department a motion requesting judicial resolution of the dispute. The motion shall contain a written statement of Defendant's 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.

79. Notwithstanding the provisions of the Federal Rules of Civil Procedure, the United States and the Commonwealth shall respond to Defendant's motion within thirty (30) days, unless the Parties stipulate otherwise. Defendant may file a reply memorandum, to the extent permitted by the Local Rules or the Parties' stipulation, as applicable.

80. In any dispute under this Paragraph, Defendant shall bear the burden of demonstrating that Defendant's position best complies with the terms and conditions of, and furthers the objectives of, this Consent Decree, the Clean Water Act, and the Clean Streams Law.

81. 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 grants an order extending such deadline. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the

dispute as provided in Section X. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties) and consistent with the Court's ruling.

### **XIII. EFFECT OF SETTLEMENT**

82. Compliance with this Consent Decree, including the payment of all civil and stipulated penalties and interest accrued thereon, and the completion of all injunctive relief, shall resolve the United States' and the Commonwealth of Pennsylvania's civil claims for violations of the Clean Water Act and the Clean Streams Law as alleged in the Complaint filed in this matter, through the Date of Lodging of this Consent Decree.

### **XIV. NON-WAIVER PROVISIONS**

83. The Parties agree that Defendant is responsible for achieving and maintaining complete compliance with all applicable federal and Commonwealth laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits, except as otherwise expressly specified in the Consent Decree.

84. The United States and Commonwealth of Pennsylvania, do not, by their consent to the Lodging of this Consent Decree, warrant or aver in any manner that Defendant's complete compliance with this Consent Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. or with Pennsylvania's water pollution control laws. Notwithstanding EPA's and the Department's review or acceptance of any plans, reports, policies, or procedures formulated pursuant to this Consent Decree, Defendant shall remain solely responsible for any non-compliance with the terms of this Consent Decree, the Clean



Water Act and regulations promulgated under that Act, and Pennsylvania's Environment Article and implementing regulations.

85. The Parties reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

86. This Consent Decree shall not limit any authority of EPA and the Department under the Clean Water Act, the Clean Streams Law, or any other applicable statute, including the authority to seek information from Defendant or to seek access to the property of Defendant.

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

88. The United States and the Commonwealth of Pennsylvania reserve all remedies available to them for violations of the Clean Water Act and the Clean Streams Law by Defendant which are not addressed in this Consent Decree.

89. This Consent Decree does not resolve criminal liability, if any, that any person might have for violations of the Clean Water Act or the Clean Streams Law.

90. Nothing in this Consent Decree shall be construed to limit the authority of the United States or the Commonwealth of Pennsylvania to undertake any action against any person, including Defendant, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

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

91. This Consent Decree is not and shall not be construed as a permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, nor as a modification of any existing permit so issued, nor shall it in any way relieve Defendant of its obligations to comply with

permits, if any, otherwise required for any portion of its Collection System or related sanitary sewage treatment facilities, and with any other applicable federal or Commonwealth law or regulation. Defendant must comply with any new permit, or modification of existing permits, in accordance with applicable federal and Commonwealth laws and regulations.

92. Nothing herein shall be construed as relieving Defendant of the duty to comply with the Clean Water Act and the Pennsylvania Clean Streams Law, the regulations promulgated under those acts, and all applicable permits issued under those acts and regulations.

#### **XVI. COSTS OF SUIT**

93. All parties shall bear their own costs and attorney's fees with respect to matters resolved by this Consent Decree.

#### **XVII. RECORD KEEPING**

94. Defendant shall maintain copies of any reports, plans, permits and documents, submitted to EPA and the Department pursuant to this Consent Decree, including any underlying research and data, for a period of five (5) years from date of submission. Defendant shall require any independent contractor operating any portion of the Defendant's Collection System or implementing any portion of this Consent Decree to also retain such materials for a period of five (5) years from date of submission. Defendant shall submit such supporting documents to EPA and the Department upon request.

95. In addition to the reports and documentation required to be provided by Defendant under the terms of this Consent Decree, Defendant shall also provide, upon demand, any analytical data or any other documents requested by the United States and the Department to review work done, or to be done, by Defendant or to determine Defendant's compliance with the terms of this Consent Decree.

96. Defendant shall notify EPA and the Department thirty (30) days prior to the disposal or destruction of such records at the end of this five year period and shall, upon EPA's and the Department's request, make such records available to EPA and the Department prior to such disposal or destruction.

### **XVIII. FORM OF NOTICE**

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

**As to the United States:**

Margaret L. Hutchinson  
Chief, Civil Division Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106-4476  
Re: DOJ No. 90-5-1-1-4402/2

Nancy Flickinger  
Senior Attorney  
United States Department of Justice  
Environmental and Natural Resources Division  
Ben Franklin Station  
P.O. Box 7611  
Washington, DC 20044-7611

**As to the Environmental Protection Agency:**

Pamela Lazos (3RC20)  
Senior Assistant Regional Counsel  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

Lisa Trakis (3WP42)  
Water Protection Division  
United States Environmental Protection Agency  
Region III

1650 Arch Street  
Philadelphia, PA 19103

**As to Commonwealth of Pennsylvania:**

Steve O'Neil  
Environmental Group Manager  
Water Management Program  
Pennsylvania Department of Environmental Protection  
2 East Main Street  
Norristown, PA 19401

**As to Defendant:**

Jeff Bartlett  
Managing Director of Bristol Township  
Bristol Township Municipal Building  
2501 Bath Road  
Bristol, PA 19007

Russell P. Sacco, Esquire  
Solicitor for Bristol Township  
53 S. Main Street  
Yardley, PA 19067

Notifications to or communications with EPA, the Department and the United States Department of Justice ("DOJ") shall be deemed submitted on the date they are received.

**XIX. MODIFICATION**

98. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior written agreement, representation or understanding. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X of this Decree (Dispute Resolution), provided, however, that instead of the burden of proof provided by Paragraph 80, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with the Fed. R. Civ. P. 65(b). The Consent Decree may be modified by written Order of this Court. Modifications deemed non-material by mutual agreement of EPA, the Department, and Defendant, including extension of deadlines

within this Consent Decree for not more than ninety (90) days, shall be in writing and must be filed with the Court before such modification will be deemed effective but are deemed effective without further written Order of this Court.

#### **XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

99. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment, pursuant to the requirements of 28 C.F.R. § 50.7. The United States and the Commonwealth reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendant consents to the Lodging of this Consent Decree without further notice.

100. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XXI. RETENTION OF JURISDICTION**

101. 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 this Consent Decree provides for resolution of disputes by the Court. Such jurisdiction shall not terminate until all requirements of this Consent Decree have been fulfilled and all disputes arising under this Consent Decree have been resolved.

#### **XXII. TERMINATION**

102. The Consent Decree shall terminate when all of the following events have occurred:

a. Defendant certifies that it has completed all obligations under Section V (Remedial Measures) of this Consent Decree, and that it has maintained compliance with all other requirements of the Consent Decree for a period of one year following completion of its obligations under Section V.

b. Defendant has paid all civil penalties, costs, damages, stipulated penalties, and any other sums due under this Consent Decree; and

c. The Parties file a Joint Motion to Terminate the Consent Decree with the Court and the Court grants the Motion.

103. The Consent Decree shall not terminate if, following certification by Defendant of compliance pursuant to Paragraph 102, above, the United States or the Commonwealth of Pennsylvania assert in writing that full compliance has not been achieved. If the United States or the Commonwealth of Pennsylvania dispute Defendant's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court in accordance with the Dispute Resolution provisions of this Consent Decree.

### **XXIII. SIGNATORIES/SERVICE**

104. The Assistant Attorney General and her designee on behalf of the United States and the undersigned representatives of Defendant and the Commonwealth of Pennsylvania certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

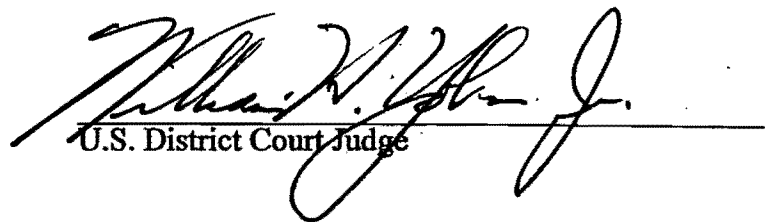
105. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

**XXIV. INTEGRATION/APPENDICES**

106. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercede all prior agreements and understandings, whether oral or written. Other than the Appendices, which are attached to and incorporated into this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

Dated and entered this 18 day of January 2010.

UNITED STATES DISTRICT COURT

  
U.S. District Court Judge

WE HEREBY CONSENT to the entry of the Consent Decree in the United States v. Bristol Township, Civil Action No. \_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES ATTORNEY:


  
\_\_\_\_\_  
ZANE DAVID MEMEGER  
United States Attorney

615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106-4476  
Re: DOJ No. 90-5-1-1-444402/2

Dated: 9-27-10

  
\_\_\_\_\_  
MARGARET L. HUTCHINSON  
Chief, Civil Division, Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106-4476  
Re: DOJ No. 90-5-1-1-444402/2

Dated: 9-27-10

  
\_\_\_\_\_  
PAUL W. KAUFMAN  
Assistant U.S. Attorney *MLA*  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106-4476  
Re: DOJ No. 90-5-1-1-444402/2

Dated: 9-27-10



WE HEREBY CONSENT to the entry of the Consent Decree in the United States v. Bristol Township, Civil Action No. \_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES DEPARTMENT OF JUSTICE:



\_\_\_\_\_  
W. Benjamin Fisherow  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
Ben Franklin Station  
P.O. Box 7611  
Washington, DC 20044-7611

Dated: \_\_\_\_\_

9/8/10



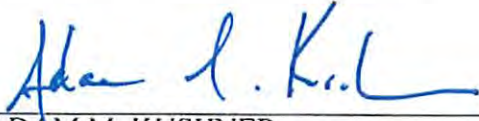
\_\_\_\_\_  
NANCY FLICKINGER  
Environmental Enforcement Section  
Environment and Natural Resource Division  
United States Department of Justice  
Ben Franklin Station  
P.O. Box 7611  
Washington, DC 20044-7611

Dated: \_\_\_\_\_

9/9/2010

WE HEREBY CONSENT to the entry of the Consent Decree in the United States v. Bristol Township, Civil Action No. \_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:



ADAM M. KUSHNER  
Office Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dated: September 24, 2010



MARK POLLINS  
Division Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dated: 9/23/10




CAROL DEMARCO  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dated: 9/23/10

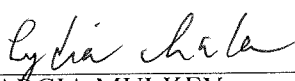
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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
SHAWN M. GARVIN  
Regional Administrator  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

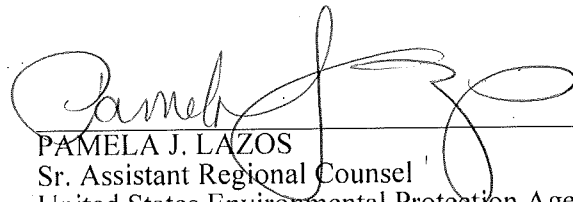
Dated: \_\_\_\_\_

9/23/10

  
\_\_\_\_\_  
MARCIA MULKEY  
Regional Counsel  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

Dated: \_\_\_\_\_

9/17/10

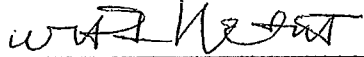
  
\_\_\_\_\_  
PAMELA J. LAZOS  
Sr. Assistant Regional Counsel  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

Dated: \_\_\_\_\_

9/15/10

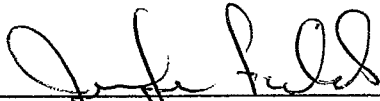
WE HEREBY CONSENT to the entry of the Consent Decree in the United States v. Bristol Township, Civil Action No.

FOR THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:



\_\_\_\_\_  
**WILLIAM H. GELLES**  
Assistant Counsel  
Pennsylvania Department of Environmental Protection  
2 East Main Street  
Norristown, PA 19401

Dated: 9/15/2010



\_\_\_\_\_  
**JENIFER FIELDS**  
Water Program Manager  
Pennsylvania Department of Environmental Protection  
2 East Main Street  
Norristown, PA 19401

Dated: 9/15/10

WE HEREBY CONSENT to the entry of the Consent Decree in the United States v. Bristol Township, Civil Action No.

FOR BRISTOL TOWNSHIP:



RICK PLUTA

Bristol Township Council  
Council President  
2501 Bath Road  
Bristol, PA 19007

Dated: 08/19/10



JEFF BARTLETT

Bristol Township  
Managing Director  
2501 Bath Road  
Bristol, PA 19007

Dated: 08/19/10



RUSSELL P. SACCO

Solicitor, Bristol Township  
53 South Main Street  
Yardley, PA 19067

Dated: 08/19/10