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APPENDIX A

ATTACHMENT 1

ATTACHMENT 2

APPENDIX B

## INTRODUCTION

WHEREAS, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint alleging that Defendant, the Board of Water and Sewer Commissioners of the City of Mobile, Alabama ("Defendant" or "Board"), has violated the Clean Water Act, 33 U.S.C. § 1251 *et seq.* ("CWA"); and,

WHEREAS, the State of Alabama has joined in the United States' Complaint as a party plaintiff pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e); and

WHEREAS, on July 2, 1999, the State of Alabama, on behalf of ADEM, also filed a Complaint in Circuit Court of Mobile County alleging that the Board has violated the AWPCA, §§ 22-22-1 *et seq.* captioned State of Alabama v. Board of Water and Sewer Commissioners of the City of Mobile, CV-99-2193; and

WHEREAS, on May 5, 1999, Mobile Bay Watch, Inc. ("MBW") issued a 60-day notice of intent to sue to the Board pursuant to 33 U.S.C. § 1365;

WHEREAS, on July 13, 1999, MBW filed a Complaint in this District under the citizen's suit provisions of the CWA captioned Mobile Bay Watch, Inc. v. The Board of Water and Sewer Commissioners of the City of Mobile, Alabama, CV-99-0595-CB-S, alleging that the Board has violated the CWA; and

WHEREAS, the United States, the State and MBW have moved jointly that the two federal actions be consolidated;

WHEREAS, the Board is a political subdivision of the City of Mobile, Alabama, and is the holder of National Pollutant Discharge Elimination System ("NPDES") permits authorizing the discharge

of pollutants from certain wastewater treatment facilities, and is the owner and operator of certain wastewater collection and transmission systems; and

WHEREAS, EPA Region 4 invited the Board, by letter dated July 15, 1998, to participate in the Management, Operations and Maintenance (“MOM”) Programs Project; and

WHEREAS, the Board agreed to participate in the MOM Programs Project by letter dated August 13, 1998, which participation was confirmed through correspondence and the Board’s attendance at various public watershed meetings from that date through April 18, 1999; and

WHEREAS, the Board has voluntarily undertaken a self-assessment of the Board’s sanitary sewer collection systems to evaluate its management, operation and maintenance of the infrastructure, including its effectiveness at minimizing Sanitary Sewer Overflows, and in connection therewith submitted to EPA its MOM Self-Assessment Report on August 27, 1999; and

WHEREAS, the Board’s Self-Assessment Report showed that the Board had begun to implement significant sewer rehabilitation and self-improvement projects; and

WHEREAS, as a result of the self-assessment process, the Board has already modified or created, and is now implementing, the following management, operation and maintenance improvement projects: safety and training programs, an integrated information management system, a mapping program, a continuing sewer system assessment and rehabilitation program, a financial and cost analysis program, an equipment management program, and a customer service program; and

WHEREAS, in this Consent Decree, the Board agrees to pay a civil penalty, to perform injunctive relief and to implement certain Supplemental Environmental Projects in settlement of the civil claims alleged in Plaintiffs’ Complaints; and

WHEREAS, by entering this Consent Decree, the Board does not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the Complaints; and

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

NOW THEREFORE, before the taking of any testimony, without admission by Defendant of the non-jurisdictional allegations in the Complaints, without adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Consent Decree, it is hereby ORDERED, ADJUDGED and DECREED as follows:

#### **I. JURISDICTION**

1. This Court has jurisdiction over the subject matter herein and the parties to these consolidated actions pursuant to sections 309 and 505 of the Act, 33 U.S.C. §§ 1319 and 1365, and 28 U.S.C. §§ 1331, 1345 and 1355. This Court has supplemental jurisdiction over the state law claims. The Complaints state claims upon which relief may be granted against the Board for injunctive relief and civil penalties. Authority to bring suit herein on behalf of the United States is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519, and 33 U.S.C. §§ 1366 and 1369. Authority to bring suit herein on behalf of the State of Alabama is vested in the Alabama Attorney General by the Code of Alabama (1975), § 22-22A-5(1), § 22-22-9(m), § 22-22-9(n), § 22-22-9(o), § 22-22A-5(12), § 22-22A-5(18), and § 36-15-12.

## **II. VENUE**

2. Venue is proper in the United States District Court for the Southern District of Alabama, Southern Division, pursuant to sections 309(b) and 505 of the Act, 33 U.S.C. §§ 1319(b) and 1365, and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because it is the judicial district in which the Board is located, and in which the alleged violations occurred.

## **III. PARTIES BOUND**

3. This Consent Decree applies to, and is binding upon, the United States on behalf of EPA, and upon the State, MBW and the Board and their officials, officers, directors, employees, agents, servants, successors and assigns, and upon all persons, firms and corporations who assist the Board in performing its obligations under this Consent Decree.

4. Effective upon the date of lodging of this Consent Decree until its termination, the Board shall give written notice of this Consent Decree to any successors in interest prior to transfer of ownership, management, operation or maintenance of any portion of its Wastewater Treatment Facilities (“WWTFs”) or Wastewater Collection and Transmission Systems and shall provide a copy of this Consent Decree to any successor in interest. The Board shall notify EPA Region 4, ADEM and MBW, in writing, as specified in Section XXII, of any successor in interest at least twenty-one (21) days prior to any such transfer. Any such transfer or change in status of the Board shall in no way alter the Board’s responsibilities under this Consent Decree.

5. The Board shall be responsible for ensuring that any contractors hired to perform Work pursuant to this Consent Decree comply with all terms of this Consent Decree and with applicable law.

#### **IV. OBJECTIVES**

6. It is the express purpose of the Parties to further the objectives set forth in section 101 of the CWA, 33 U.S.C. § 1251, and to resolve Plaintiffs' claims for civil penalties and injunctive relief alleged in the Complaints in a manner consistent with the public interest, the CWA and the AWPCA, and regulations promulgated under the CWA and the AWPCA. The Board agrees, *inter alia*, to finance and perform the Work in accordance with this Consent Decree to achieve the goals of: (1) compliance with the NPDES Permits, the CWA, the AWPCA, and their regulations; (2) elimination of Unpermitted Discharges; and (3) elimination of Sanitary Sewer Overflows.

#### **V. DEFINITIONS**

7. Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the CWA, 33 U.S.C. §§ 1251 *et seq.*, and the regulations promulgated thereunder. Whenever terms listed below are used in this Consent Decree or appendices attached hereto and/or incorporated hereunder, the following definitions shall apply:

“ADEM” shall mean the Alabama Department of Environmental Management and any successor departments or agencies of the State.

“AWPCA” shall mean the Alabama Water Pollution Control Act, Code of Alabama (1975) §§ 22-22-1 *et seq.*

“MBW” shall mean the Mobile Bay Watch, Inc., any successor thereto, and its officers, directors and members.

“Board” shall mean the Defendant in these actions, the Board of the Water and Sewer Commissioners of the City of Mobile, Alabama, and any successor thereto.

“Bypass” shall have the meaning given to that term in 40 C.F.R. § 122.41(m).

“Calendar Quarter” shall mean the three (3) month periods ending on March 31st, June 30th, September 30th, and December 31st.

“Certification” or “certify” when used in this Consent Decree shall require the Board to comply with Section XX of this Consent Decree.

“Consent Decree” shall mean this document and all appendices hereto. In the event of a conflict between this document and any appendix, this document shall control.

“CWA” or “Act” shall mean the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq.

“Date of Entry” shall mean the date on which this Decree is entered by the United States District Court for the Southern District of Alabama, Southern Division.

“Date of Lodging” shall mean the date on which this Decree is lodged by the United States with the United States District Court for the Southern District of Alabama for a period of public comment.

“Day” or “Days” as used herein shall mean a calendar day or calendar days, unless otherwise indicated. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday, federal holiday or legal holiday for the Board, the Board shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other deliverable.

“Defendant” shall mean the Board of Water and Sewer Commissioners of the City of Mobile, Alabama.

“Deliverable” shall mean any written document required to be prepared and/or submitted by or on behalf of the Board pursuant to this Decree.

“DOJ” shall mean the United States Department of Justice including any successor departments or agencies of the United States.

“EPA” shall mean the United States Environmental Protection Agency including any successor departments or agencies of the United States.

“Interceptor Sewer” shall mean a gravity sewer line of any diameter that collects wastewater from a neighborhood or area sewer line that connects directly to an individual customer lateral.

“Main Sewer Line” shall mean an Interceptor Sewer that crosses or is adjacent to waters of the United States or the State.

“Maintenance” shall have the meaning given to the term in 40 C.F.R. § 35.2005(b)(30).

“Major Gravity Trunk Sewer” shall mean sanitary sewers which are twenty-four (24) inches or greater in diameter.

“Month” shall mean one calendar month running from the numbered day to the same numbered day of the following calendar month, regardless of whether the particular month has 28, 29, 30 or 31 days. In the event a triggered event would occur on a day of the month which does not exist (for example, on February 30), then the event shall be due on the first day of the following month (for example, March 1).

“NPDES Permits” shall mean the National Pollutant Discharge Elimination System Permits issued to the Board, including but not limited to those permits issued for the Wright-Smith, Jr.

Wastewater Treatment and Collection Facility, Permit No. AL0023094, the Clifton C. Williams Wastewater Treatment and Collection Facility, Permit No. AL0023086, and the Bill Ziebach Wastewater Treatment and Collection Facility, Permit No. AL0023078.

“Operation” shall have the meaning given to the term in 40 C.F.R.

§ 35.2005(b)(30).

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

“Parties” shall mean the United States on behalf of EPA, the State, MBW and the Board.

“Priority Pollutants” shall mean those pollutants identified in Tables II and III of Appendix D of 40 C.F.R. § 122.

“Public Contacts” shall mean the parties included on a list maintained by the Board for use during an emergency situation as provided in Section VIII.

“Public Document Repository” shall mean the Offices of the Board, which are located at 207 N. Catherine Street, Mobile, AL 36604-1504. At such time as construction on the Board’s Learning Center on Cox Street is completed, the Board may, upon written notice to the Parties, relocate the Public Document Repository to the Learning Center. Documents sent to the Public Document Repository pursuant to this Consent Decree are intended to be available for public review and copying. The Board shall bear the sole responsibility for depositing documents in the Public Document Repository. The Board shall post electronic versions of all documents placed in the Public Document Repository on its website ([www.mawss.com](http://www.mawss.com)) within fourteen (14) days of their placement in

the Public Document Repository. The Board shall post electronic versions of all water quality monitoring data in the Public Document Repository within twenty-one (21) days of receiving such data.

“Public Health Authorities” shall mean the Mobile Public Health Department.

“Section” shall mean a portion of this Consent Decree identified by an uppercase Roman numeral.

“Sanitary Sewer Overflow” or “SSO” shall mean the intentional or unintentional diversion of flow from any part of the Wastewater Collection and Transmission Systems which occurs before the headworks of a Wastewater Treatment Facility. SSOs include discharges to waters of the United States and the State, as well as discharges to public or private property that do not reach waters of the United States or the State, such as to land surfaces or structures. A diversion of flow at or upstream of the connection of the Board’s Wastewater Collection and Transmission Systems with an individual customer or a wastewater collection and transmission system owned and operated by such other party shall not be considered an SSO unless the Board’s acts or omissions caused or contributed to a discharge or a failure in the connection between the two systems. The Board shall have caused or contributed to a failure in the connection between the two systems if, at the time of the diversion of flow, it knew or had reason to know of the failure in the connection and did not take steps to correct the failure in the connection or to terminate the connection.

“Sewerbasin” shall mean all portions of the Board’s Wastewater Collection and Transmission Systems tributary to a Major Gravity Trunk Sewer. Each Sewerbasin is hydraulically linked and independent of other Sewerbasins, unless otherwise noted.

“State” shall mean the State of Alabama including all of its departments, agencies and

instrumentalities.

“Supplemental Environmental Projects” or “SEPs” shall mean those projects set forth in Appendix A of this Consent Decree.

“Timely,” when applied to the submittal of a Deliverable or the completion of an element of Work, shall mean submittal or completion no later than the deadline established in or pursuant to this Consent Decree.

“Timely submitted and complete” shall mean having been submitted in a timely manner and containing all components established as necessary under this Consent Decree.

“United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

“Unpermitted Discharge” shall mean the discharge of pollutants from a point source into waters of the United States or the State which is not authorized by an NPDES Permit, including but not limited to any SSO which reaches waters of the United States or the State indirectly.

“Wastewater Collection and Transmission Systems” shall mean all wastewater collection and transmission sewers, pump stations, force mains, and other appurtenances which are owned or operated by the Board.

“Wastewater Treatment Facility” or “WWTF” shall mean devices or systems used in the storage, treatment, recycling, and reclamation of municipal sewage. For purposes of this Consent Decree, this definition shall include all facilities owned, managed, operated, and maintained by the Board, including but not limited to the following facilities: Wright-Smith, Jr. WWTF (NPDES #AL0023094), Clifton C. Williams WWTF (NPDES # AL0023086), and Bill Ziebach WWTF

(NPDES # AL0023078).

“Waters of the State,” for the purposes of this Consent Decree only, shall not include underground waters unless immediately connected to surface waters.

“Work” shall mean all activities the Board is required to perform under this Consent Decree.

## **VI. COMPLIANCE WITH APPLICABLE LAW**

8. Upon entry of this Consent Decree, the Board shall perform the Work required in this Decree so as to achieve compliance with the CWA, the AWPCA, all regulations promulgated under the CWA and AWPCA, and the NPDES Permits. All activities undertaken by the Board pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The Board is responsible for ensuring that any contractors hired to perform Work pursuant to this Consent Decree comply with applicable law and with this Consent Decree.

## **VII. REVIEW AND APPROVAL OF DELIVERABLES**

9. Each Deliverable is subject to review by EPA and ADEM. The scope of review varies depending on the nature of the Deliverable, as set forth in this Section.

10. Review Level 1 Deliverables. All Deliverables that are subject to Review Level 1 shall be submitted to EPA for review and approval. All such Deliverables also shall be submitted to ADEM and MBW concurrent with the submittal to EPA, even when not otherwise stated. After review of any Deliverable which is subject to Review Level 1, EPA, after reasonable opportunity for review and comment by the State, shall, at its discretion: (a) approve, in whole or in part, the Deliverable; (b)

approve the Deliverable upon specified conditions; (c) modify the Deliverable to cure the deficiencies; (d) disapprove, in whole or in part, the Deliverable, directing the Board to modify the Deliverable; or (e) any combination of the above. EPA will use best efforts to take action pursuant to this Paragraph within forty-five (45) days of receipt of any Deliverable. MBW may submit comments to EPA, ADEM and the Board on all Review Level 1 Deliverables within forty-five (45) days of receipt of any such Deliverable (“Initial Comment Period”). In the event that MBW submits comments on a Deliverable under this Paragraph, MBW shall provide such comments to all Parties pursuant to the notice requirements of Section XXII of this Decree. Prior to the expiration of the Initial Comment Period, MBW may request a meeting with some or all of the Parties to discuss the Deliverable. The meeting shall provide the Parties an opportunity to exchange information and documents in order to resolve any differences of opinion regarding the Deliverable. In the event that MBW concludes that it would benefit from additional time, MBW may provide written notice to all Parties, pursuant to Section XXII of this Decree, of its intention to extend the Initial Comment Period by up to an additional 30 days (“Extended Comment Period”). Such notice shall be given prior to the expiration of the Initial Comment Period. Prior to the expiration of the Extended Comment Period, MBW may request a meeting with some or all of the Parties to discuss the Deliverable. In the event that MBW invokes its right to extend the Initial Comment Period, the Board may seek EPA’s approval to extend any deadline that would be affected by delayed approval of the Deliverable.

11. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 10(a), (b), (c), or (e), the Board shall proceed to take any action required by the Deliverable, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution

procedures set forth in Section XIV (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 10(c) or (e) and the Deliverable has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XII (Stipulated Penalties). The Board shall place a copy of the Deliverable in the Public Document Repository within fourteen (14) days of EPA's approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 10(a), (b), (c), or (e).

12. Resubmission of Review Level 1 Deliverables.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 10(d) or (e), the Board shall, within one Month or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the Deliverable for approval.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 10(d) or (e), the Board shall proceed to take any action required by any non-deficient portion of the Deliverable. Implementation of any non-deficient portion of a Deliverable shall not relieve the Board of any liability for stipulated penalties under Section XII (Stipulated Penalties).

c. In the event that a resubmitted Deliverable, or portion thereof, is disapproved by EPA, EPA may again require the Board to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right, but has no duty, to modify or develop the Deliverable. The Board shall implement any such Deliverable as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XIV (Dispute Resolution).

d. If upon resubmission, a Deliverable is disapproved or modified by EPA due to a material defect, the Board shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Board invokes the dispute resolution procedures set forth in Section XIV (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIV (Dispute Resolution) and Section XII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date of EPA's initial disapproval.

13. All Review Level 1 Deliverables required to be submitted to EPA for approval under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a Deliverable required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

14. Review Level 2 Deliverables. All Deliverables that are subject to Review Level 2 shall be submitted to EPA for review and comment within the time period specified in this Consent Decree. All such Deliverables also shall be submitted to ADEM and MBW concurrent with the submittal to EPA, even when not otherwise stated. EPA shall thereafter provide written comments on the Deliverable to the Board, after consultation with ADEM. MBW may submit comments to EPA, ADEM and the Board on all Review Level 2 Deliverables within forty-five (45) days of receipt of any such Deliverable ("Initial Comment Period"). In the event that MBW submits comments on a Deliverable under this Paragraph, MBW shall provide such comments to all Parties pursuant to the

notice requirements of Section XXII of this Decree. Prior to the expiration of the Initial Comment Period, MBW may request a meeting with some or all of the Parties to discuss the Deliverable. The meeting shall provide the Parties an opportunity to exchange information and documents in order to resolve any differences of opinion regarding the Deliverable. In the event that MBW concludes that it would benefit from additional time, MBW may provide written notice to all Parties, pursuant to Section XXII of this Decree, of its intention to extend the Initial Comment Period by up to an additional 30 days (“Extended Comment Period”). Such notice shall be given prior to the expiration of the Initial Comment Period. Prior to the expiration of the Extended Comment Period, MBW may request a meeting with some or all of the Parties to discuss the Deliverable. In the event that MBW invokes its right to extend the Initial Comment Period, the Board may seek EPA’s approval to extend any deadline that would be affected by the delay in receipt of EPA’s comments on the Deliverable. The Board shall revise the Deliverable to address EPA’s comments within thirty (30) days of receipt of EPA’s comments. Thereafter, the Board shall implement the program described in the Deliverable according to the time schedule set forth in the Review Level 2 Deliverable. The Board shall provide a copy of the revised Deliverable to EPA, ADEM and MBW and shall place a copy of the revised Deliverable in the Public Document Repository within thirty (30) days of receipt of EPA’s comments.

### **VIII. PERFORMANCE OF THE WORK**

15. Upon the Date of Entry, the Board shall implement the Work pursuant to this Consent Decree.

16. After providing two working days notice to the Board, EPA and/or ADEM may conduct an audit to evaluate the Board’s implementation of the Work. Such notice shall make a good

faith effort to identify the expected principle focus of the audit but shall not limit EPA's or ADEM's right to inquire into any activity relating to the Work during any such audit. After any audit, the auditing agency may take any lawful action, including the following: (a) issue binding instructions for improving the design, management, operation, or maintenance of any of the Board's facilities; (b) request additional information under the information gathering provisions of this Consent Decree or other applicable law; (c) issue a report identifying violations of the Consent Decree noted during the audit ("Audit Report"); and/or (d) revoke approval of any Deliverable. The auditing agency shall furnish to all Parties a copy of any Audit Report sent to the Board hereunder. Within one Month after receipt of an Audit Report pursuant to this Paragraph, the Board shall respond in writing to the Audit Report and implement actions to address identified deficiencies, unless the auditing agency approves a longer schedule in writing. The Board's response shall be sent to all Parties in accordance with Section XXII (Form of Notice). Under Section XIV (Dispute Resolution), the Board may dispute any factual finding in the Audit Report and any determination arising from the audit that an action is needed. If EPA revokes its approval of a Deliverable pursuant to this Paragraph, within one Month of receipt of EPA's revocation of the Deliverable, the Board shall modify the Deliverable to address identified deficiencies and resubmit the Deliverable pursuant to Paragraph 10 (Review Level 1 Deliverables).

17. Nothing in this Consent Decree relieves the Board from timely compliance with all laws pertaining to its WWTFs and Wastewater Collection and Transmission Systems. Nothing in this Consent Decree limits the ability of EPA and ADEM to gather information or conduct inspections under other legal authorities.

18. The Board shall maintain sufficient financial and personnel resources and sufficient

equipment and analytical services to administer and implement the Work set forth in this Section.

19. The Board's financial status shall not excuse delayed or avoided compliance with this Consent Decree.

20. System Capacity Assurance Program

a. Short-Term Capacity Assurance Program for New Connections

i. On or about December 31, 2001, the Board submitted to EPA, ADEM and MBW, the Short-Term Capacity Assurance Program described herein. This Deliverable is subject to Review Level 1. Upon EPA's approval of the Short-Term Capacity Assurance Program, the Board shall implement the Short-Term Capacity Assurance Program according to the schedule provided in the Short-Term Capacity Assurance Program.

ii. The Short-Term Capacity Assurance Program shall permit the Board to authorize new sewer service connections, or increases in flow from existing sewer service connections, only after the Board certifies that it has Adequate Collection Capacity, Adequate Transmission Capacity and Adequate Treatment Capacity as set forth in subparagraph 20(c) below. All such certifications shall be made by a professional engineer registered in the State of Alabama and shall be approved by a responsible party as defined by 40 C.F.R. § 122.22 or Part I(C)(1)(c) of the NPDES Permits. The Board shall maintain all such certifications in its offices for inspection by EPA and ADEM. The Short-Term Capacity Assurance Program shall apply to a Sewerbasin or part of a Sewerbasin only until such time as the Board has implemented the Long-Term Capacity Assurance Program described in subparagraph 20(b) below in that Sewerbasin or part of a Sewerbasin. Nothing

in the Short-Term Capacity Assurance Program shall be construed to set standards for the design of the Wastewater Collection and Transmission Systems.

iii. At a minimum, the Short-Term Capacity Assurance Program shall contain all of the following elements. It shall specify the technical information, methodology and analytical techniques, including the model or software, to be used by the Board to calculate collection, transmission and treatment capacity during the period that the Short-Term Capacity Assurance Program is in effect. It shall address the means by which the Board will integrate its certification of Adequate Collection Capacity, Adequate Transmission Capacity and Adequate Treatment Capacity, with the issuance of building and occupancy permits by the City of Mobile, and the Board's acquisition of new or existing sewers from other owners. It shall establish and maintain an information management system capable of calculating the net (cumulative) increase or decrease in volume of wastewater introduced to the Board's Wastewater Collection and Transmission Systems as a result of the Board's authorization of new sewer service connections or increases in flow from existing connections and its elimination of inflow and infiltration to the Wastewater Collection and Transmission Systems. It shall set forth all evaluation protocols to be used to calculate collection, transmission and treatment capacity including, but not limited to, standard design flow rate rules of thumb regarding pipe roughness, manhole head losses, as-built drawing accuracy (distance and slope), and water use (gpcd); projected flow impact calculation techniques; and metering of related existing peak flows (flows metered in support of analysis and/or manual observation of existing peak flows).

b. Long-Term Capacity Assurance Program for New Connections

i. By August 1, 2002, the Board shall develop and submit to EPA, ADEM and MBW the Long-Term Capacity Assurance Program described herein. This Deliverable is subject to Review Level 1. Upon EPA's approval of the Long-Term Capacity Assurance Program, the Board shall implement the Long-Term Capacity Assurance Program according to the schedule provided in the Long-Term Capacity Assurance Program.

ii. The Long-Term Capacity Assurance Program shall permit the Board to authorize new sewer service connections, or increases in flow from existing sewer service connections, only after the Board certifies that it has Adequate Collection Capacity, Adequate Transmission Capacity and Adequate Treatment Capacity, as set forth in subparagraph 20(c) below. All such certifications shall be made by a professional engineer registered in the State of Alabama and shall be approved by a responsible party as defined by 40 C.F.R. § 122.22 or Part I(C)(1)(c) of the NPDES Permits. The Board shall maintain all such certifications in its offices for inspection by EPA and ADEM.

iii. At a minimum, the Long-Term Capacity Assurance Program shall contain all of the following elements. It shall specify the technical information, methodology and analytical techniques, including the model or software, to be used by the Board to calculate collection, transmission and treatment capacity during the period that the Long-Term Capacity Assurance Program is in effect. The Long-Term Capacity Assurance Program shall address the means by which the Board will integrate its certification of Adequate Collection Capacity, Adequate Transmission Capacity and Adequate Treatment Capacity with the issuance of building and occupancy permits by the City of

Mobile, and the Board's acquisition of new or existing sewers from other owners. It shall include an information management system capable of calculating the net (cumulative) increase or decrease in volume of wastewater introduced to the Wastewater Collection and Transmission Systems as a result of the Board's authorization of new sewer service connections, or increases in flow from existing connections, and its elimination of inflow and infiltration to the Wastewater Collection and Transmission Systems. It shall set forth all evaluation protocols to be used to calculate collection, transmission and treatment capacity including, but not limited to, standard design flow rate rules of thumb regarding pipe roughness, manhole head losses, as-built drawing accuracy (distance and slope), and water use (gpcd); projected flow impact modeling/calculation techniques (hydraulic model of gravity system, pipe sizes modeled, hydraulic model of pressure system, and other appropriate techniques such as for a manifold system); and metering of related existing peak flows (flows metered in support of analysis and/or manual observation of existing peak flows). The Long-Term Capacity Assurance Program shall also provide for the identification of industrial and other stormwater discharges to the Wastewater Collection and Transmission Systems, the elimination of all such unlawful discharges, and reduction of any such lawful discharge.

c. Capacity Certifications

i. The Board's certification of "Adequate Treatment Capacity" shall attest that the WWTF that will receive flow from proposed sewer service connection(s) or increased flows from existing sewer service connections will not be in "non-compliance" for quarterly reporting as defined in 40 C.F.R. Part 123.45, Appendix A. The Board's certification shall verify that, at the time the WWTF receives the flow from proposed sewer service connection(s) or increased flows from

existing sewer service connections, when combined with the flow predicted to occur from all other authorized sewer service connections (including those which have not begun to discharge into the Wastewater Collection and Transmission Systems), the WWTF will not be in non-compliance.

ii. The Board's certification of "Adequate Transmission Capacity" shall attest that each pump station through which all flow from proposed sewer service connection(s) or increased flows from existing sewer service connections passes to the WWTF receiving such flow, can transmit the existing one (1) hour peak flow passing through the pump station, plus the addition to existing peak flow predicted to occur from the proposed sewer service connection(s) or increased flows from existing sewer service connections, together with the addition to existing peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the Wastewater Collection and Transmission Systems.

iii. The Board's certification of "Adequate Collection Capacity" shall attest that each gravity sewer line through which all flow from proposed sewer service connection(s) or increased flows from existing sewer service connections passes to the WWTF receiving such flow, can carry the existing one (1) hour peak flow passing through the gravity sewer line plus the addition to existing peak flow predicted to occur from the proposed sewer service connection(s) or increased flows from existing sewer service connections, together with the addition to that existing peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the Wastewater Collection and Transmission Systems.

iv. The term "one hour peak flow" shall mean the greatest flow in a sewer averaged over a sixty (60) minute period at a specific location.

v. The Board shall not certify Adequate Collection Capacity or Adequate Transmission Capacity in a Sewerbasin unless and until it has completed its investigation of industrial stormwater discharges to the Wastewater Collection and Transmission Systems in that Sewerbasin, and is implementing a plan developed pursuant to the Long-Term Capacity Assurance Program to eliminate all unlawful discharges, and reduce any lawful discharge, of industrial and other stormwater to the Wastewater Collection and Transmission Systems in that Sewerbasin.

21. Sanitary Sewer Overflow (“SSO”) Reporting, Notification & Record Keeping Program

a. On or about January 1, 2002, the Board submitted to EPA, ADEM and MBW the SSO Reporting, Notification and Record Keeping Program described herein. This Deliverable is subject to Review Level 1. Upon EPA’s approval of the SSO Reporting, Notification and Record Keeping Program, the Board shall implement the Program according to the schedule provided in the SSO Reporting, Notification and Record Keeping Program. Nothing in this Paragraph shall relieve the Board of full compliance with the reporting and other obligations of the NPDES Permits, the CWA, the AWPCA, and all regulations promulgated pursuant to the CWA and the AWPCA.

b. Reporting and Notification of Unpermitted Discharges

i. Reporting to ADEM

The Board shall report all Unpermitted Discharges to ADEM in accordance with reporting requirements under the Act and the NPDES permits. When the Board makes a report to ADEM pursuant to this Paragraph, the Board shall provide MBW with a copy of such report. The Board shall report all Unpermitted Discharges to EPA in accordance with Paragraph 98(c).

ii. Reports to Public/Other Organizations

The Board shall report all Unpermitted Discharges to the public and to affected organizations, such as downstream water intakes and Public Health Authorities. The Board shall consult with Public Health Authorities and shall assist the Public Health Authorities to implement any health advisories or stream postings. Whenever an Unpermitted Discharge occurs that may endanger health or the environment, the Board shall implement the Public Notification Plan and Regulatory Agency Notification Plan set forth in subparagraphs 23(c) and (d). The Board shall prepare an annual summary report, to be made available to the public and to any entity with a downstream water intake that may be affected by the Unpermitted Discharges, that identifies all Unpermitted Discharges during the previous year, the volume and duration of each Unpermitted Discharge, the affected waterway(s), and the nature of the impact on public health or the environment, if any. The annual report shall be provided to EPA, ADEM, the Public Document Repository, MBW and any entity with a downstream water intake that may be affected by the Unpermitted Discharges on January 31<sup>st</sup> of each year following the Date of Entry.

c. Reporting and Notification of SSOs That Do Not Reach Waters

i. Reporting to ADEM

The Board shall report SSOs that do not reach waters of the State or United States to EPA, ADEM and MBW in accordance with Paragraph 98(c).

ii. Reports to Public/Other Organizations

The Board shall report all SSOs that do not reach waters of the State or the United States to the public and to Public Health Authorities, when such SSO may endanger health or the environment. Whenever an SSO occurs that may endanger health or the environment, the Board shall implement the Public Notification Plan and Regulatory Agency Notification Plan set forth in subparagraphs 23(c) and (d). The Board shall consult with Public Health Authorities and shall assist the Public Health Authorities to implement any health advisories. The Board shall prepare an annual summary report to be made available to the public that identifies SSOs that did not reach waters of the State or the United States, the basis for the determination that the SSO did not reach waters of the State or the United States, the volume and duration of each SSO, and the nature of the impact on public health or the environment, if any. The annual report shall be provided to EPA, ADEM, the Public Document Repository and MBW on January 31<sup>st</sup> of each year following the Date of Entry.

d. Standard Forms

The Board shall develop, as part of its SSO Reporting, Notification and Record Keeping Program, standard forms and report formats. An appropriate reporting form shall be available to all personnel responsible for such reporting, and all such personnel shall be adequately trained in the reporting procedures. The forms shall, at a minimum, provide for recording the following information:

- i. A description of the location and source of the Unpermitted Discharge or SSO, with photographs whenever possible;
- ii. Name of the receiving water, if any;
- iii. Basis for the determination of the receiving water or that the SSO did

- not reach waters of the State or United States;
- iv. Estimate of volume of the Unpermitted Discharge or SSO and estimating method used;
- ii. Description of system component that is the source of the Unpermitted Discharge or SSO;
- vi. Date and time the Unpermitted Discharge or SSO started and stopped;
- vii. Cause or suspected cause of the Unpermitted Discharge or SSO;
- viii. Steps taken and/or to be taken to reduce or eliminate the Unpermitted Discharge or SSO;
- ix. Date and time of the inspection of the Unpermitted Discharge or SSO;
- x. Date and time the report of the Unpermitted Discharge or SSO is made; and
- xi. Identification of all employees or contractors who observed and/or responded to the Unpermitted Discharge or SSO.

e. SSO Record Keeping Program

The Board shall maintain all reports and records developed or completed pursuant to the this Decree for a period of not less than five (5) years from the date of origin.

f. Analysis of Wastewater Collection and Transmission Systems and WWTFs

Beginning July 30, 2002, the Board shall submit a semi-annual report to EPA, ADEM and MBW that analyzes the information available through its information management systems, including information collected pursuant to this Paragraph to evaluate the operation, maintenance and performance of the Wastewater Collection and Transmission Systems and the WWTFs, including but not limited to the identification of trends in: (1) the number of Unpermitted Discharges and SSOs; (2) the location of Unpermitted Discharges and SSOs; (3) the system components responsible for Unpermitted Discharges and SSOs; (4) the impact of rehabilitation, operation and maintenance on the number, location and volume of Unpermitted Discharges and SSOs; and (5) the cause or suspected cause of Unpermitted Discharges and SSOs. The first report shall analyze data for the preceding six (6) month period; thereafter, each report shall analyze data for the preceding twelve (12) month period. Each report shall specify the data on which the trends are based, and describe the measures the Board has taken or will take to address these trends, and the impact of the measures taken.

22. Legal Support Programs for Sewer System and Wastewater Treatment Facilities

The Board shall develop and submit to EPA, ADEM and MBW the Legal Support Programs described herein by the dates set forth herein. This Deliverable is subject to Review Level 1. Upon EPA's approval of the Legal Support Programs, the Board shall implement the Legal Support Programs as specified below.

a. Ordinance Program

The Board shall review, revise, develop and enforce sewer use ordinances that give the Board the legal authority to perform all of its obligations under this Consent Decree. Among other things, such ordinances shall give the Board legal authority to authorize, monitor, restrict and prohibit sewer use; to inspect, monitor, and regulate private service laterals, sump pumps and roof drains; and to inspect and permit septic haulers as needed. The Board shall submit such ordinances to EPA for review under the following schedule:

Ordinances that are necessary to implement Short-Term Capacity Assurance Program	March 1, 2002
Ordinances that are necessary to implement SSO Reporting, Notification and Recordkeeping Program	March 1, 2002
Ordinances that are necessary to implement the Grease Control Program	June 1, 2002
Ordinances that are necessary to implement Water Quality Monitoring	July 1, 2002
All other necessary ordinances	August 1, 2002

The Board shall propose all such ordinances to the Mobile City Council or other appropriate political body for enactment within fourteen (14) days of EPA's approval, approval upon conditions, or modification by EPA pursuant to Paragraph 10(a), (b), (c), or (e). Thereafter, the Board shall make good faith efforts to cause such ordinances to be enacted. Once enacted, the Board shall enforce all such ordinances.

b. Grease Control Program

No later than June 1, 2002, the Board shall develop and, once enacted by the City Council,

enforce an ordinance implementing the Grease Control Program set forth in Paragraph 26 below. In addition, no later than June 1, 2002, the Board shall review and revise its service contracts with eating establishments to require such eating establishments to comply with the Grease Control Program. Within two Months of EPA's approval of such revisions, or by October 1, 2002, whichever comes first, the Board shall require all eating establishments to agree to such terms. The Board shall not provide service to any eating establishment that refuses to agree to such terms.

c. Maintenance of Adequate Legal Staff

The Board shall ensure that it has sufficient in-house and/or contract attorney and non-attorney personnel to fulfill all of its obligations under this Paragraph, including but not limited to its obligation to enforce all ordinances related to management, operation and maintenance of the Wastewater Treatment, Collection and Transmission Systems.

d. Maintenance of Program and Implementation Documentation

The Board shall retain all program and implementation documentation on-site for review by EPA and ADEM.

23. Contingency Plan for Sewer Systems and Wastewater Treatment Facilities

By August 1, 2002, the Board shall develop and submit to EPA, ADEM and MBW the Contingency Plan for Sewer and Wastewater Treatment Facilities described herein. This Deliverable is subject to Review Level 1. Upon EPA's approval of the Contingency Plan for Sewer and Wastewater Treatment Facilities, the Board shall implement the Contingency Plan for Sewer and Wastewater Treatment Facilities according to the schedule provided in the Contingency Plan for Sewer and Wastewater Treatment Facilities.

a. Contingency Planning Process

The Board shall develop and, as appropriate, modify contingency plans for the Wastewater Collection and Transmission System and the WWTFs to be implemented during emergency situations. For purposes of this Paragraph only, and not for purposes of defining Force Majeure pursuant to Section XIII of this Decree, an “emergency situation” shall be defined as a severe natural event or third-party action that causes, or may cause, failure or impairment of the systems, or the occurrence of any Unpermitted Discharge or SSO that may pose an imminent endanger public health or the environment. For purposes of this Paragraph only, and not for purposes of defining Force Majeure pursuant to Section XIII of this Decree, a “severe natural event” shall mean events of similar magnitude, duration and severity to:

1. Hurricane (with eye of the hurricane within 10 miles of the service area);
2. Low atmospheric pressure storm with sustained winds over 55 miles per hour in the service area for more than one hour;
3. Tornado that results in significant damage to facilities or Unpermitted Discharge;
4. Ambient temperature below 20 degrees Fahrenheit for more than 24 consecutive hours, but only if freezing conditions cause damage to sewer lines, such as wash-out from broken water lines;
5. Rainfall rate equal to or above:
  - (a) 3.40 inches over a 24-hour period at any station;
  - (b) 2.94 inches over a 24-hour period at two or more stations;
  - (c) 5.88 inches over a 48-hour period at any station;

- (d) 1.04 inches over one hour at any station;
  - (e) 0.89 inches over two one-hour periods at any station;
  - (f) 0.89 inches over one hour at more than one station;
  - (g) 0.40 inches over 15 minutes at any station
  - (h) 0.68 inches over two 15-minute periods at any station;
  - (i) 0.68 inches over 15 minutes at two stations;
- 6. Widespread flooding consistent with a 100-year storm event;
  - 7. Tidal surges 4.5 feet above mean sea level; and
  - 8. Earthquake.

The Board shall establish a Preparedness Committee of senior management and field personnel, which shall meet at least annually to evaluate the Wastewater Collection and Transmission Systems and WWTFs to determine vulnerability to emergency situations. The Preparedness Committee shall attempt to predict the failure of critical system components based upon both hypothetical and actual events. Using root cause failure analysis, the Preparedness Committee shall develop strategies to avoid or delay component failure, and repair or replace failed components in a timely fashion.

b. Response Flow Diagram

The Board shall prepare a Response Flow Diagram that describes the roles of senior management and field personnel during an emergency situation. The Response Flow Diagram shall identify the duties of all senior management and field personnel with respect to the six (6) major contingency plan components: Public Notification Plan, Agency Notification Plan, Emergency Flow Control Plan, Emergency Operations and Maintenance Plan, Preparedness Training Plan and Water

Quality Monitoring Plan. The Response Flow Diagram shall be made available to all personnel. The Response Flow Diagram shall be updated annually, or more frequently if experience with emergencies so requires.

c. Public Notification Plan

The Board shall develop and implement a Public Notification Plan that includes, but is not limited to, the following: (i) the development, in cooperation with local Public Health Authorities, of established criteria to be used as a basis for initiating public notification; (ii) a step-by-step public notification procedure flow diagram; (iii) identification, by name, phone number and pager number, of all managers who are responsible for implementing the Public Notification Plan; (iv) a plan for public notification during emergencies that begin during regular business hours; (v) a plan for public notification during emergencies that begin during off hours, weekends and holidays; (vi) identification, by name and phone number, of all Public Contacts, including MBW, who must be contacted during an emergency situation; (v) identification of Board managers authorized to make public statements during emergency situations; and (vi) pre-scripted news releases for various emergency situations. The Board shall update the Public Notification Program annually, and the updates shall be kept on-site for review by EPA and ADEM.

d. Regulatory Agency Notification Plan

The Board shall develop and implement a Regulatory Agency Notification Plan that includes, but is not limited to, the following: (i) the development, in cooperation with local, State and federal authorities, of criteria to be used as a basis for initiating regulatory agency notification; (ii) a step-by-step regulatory agency notification procedure flow diagram; (iii) identification, by name, phone number

and pager number, of all managers who are responsible for regulatory agency notification; (iv) development of a plan for emergency situations that begin during regular business hours; (v) development of a plan for emergencies that begin during off hours, weekends and holidays; (vi) identification, by name and phone number, of all regulatory agency officials who must be contacted; and (vii) use of standard regulatory agency reporting forms and report formats. The Board shall update the Regulatory Agency Notification Program annually, and the updates shall be kept on-site for review by EPA and ADEM.

e. Emergency Flow Control Plan

The Board shall develop and implement a written Emergency Flow Control Plan to minimize the environmental and public health impact of SSOs by re-routing flow, diverting flow, reducing household flow, issuing household flow advisories, reducing commercial and industrial flow, issuing commercial and industrial flow advisories, reducing water pressure, and issuing water pressure advisories. The Emergency Flow Control Plan shall include, but shall not be limited to, the following: (i) development, in cooperation with local, State and federal authorities, of criteria to be used as the basis for initiating emergency flow control procedures; (ii) a step-by-step Emergency Flow Control Plan flow diagram; (iii) identification, by name, phone number and pager number, of all managers authorized to initiate the Emergency Flow Control Plan; (iv) development of a plan for emergencies that begin during regular business hours; (v) development of a plan for emergencies that begin during off hours, weekends and holidays; (vi) identification, by name and phone number, of those persons who must be notified when emergency flow control is initiated; and (vii) standard emergency flow control plan reporting forms and report formats. The Board shall update the Emergency Flow Control Plan annually, and the updates

shall be kept on-site for review by EPA and ADEM.

f. Emergency Operations and Maintenance Plan

The Board shall develop and implement an Emergency Operations and Maintenance Plan. The Emergency Operations and Maintenance Plan shall include, but not be limited to, the following: (i) the development of emergency operation and maintenance procedures for both the Wastewater Collection and Transmission Systems and the WWTFs; (ii) the development, in cooperation with local, State and federal authorities, of criteria to be used for initiating emergency operation and maintenance procedures; (iii) a step-by-step Emergency Operation and Maintenance Plan flow diagram; (iv) provision for the use of stand-by equipment and personnel through pre-arranged rentals, standby contractors, and access to critical spare parts; (v) identification, by name, phone number and pager number, of all managers who are responsible for initiating the emergency operation and maintenance plan; (vi) development of a plan for emergencies that begin during regular business hours; (vii) development of a plan for emergencies that begin during off hours, weekends and holidays; (viii) identification, by name and phone number, of all persons who must be notified when emergency operation and maintenance procedures are initiated; and (ix) Emergency Operations and Maintenance Plan reporting forms and report formats. The Board shall update the Emergency Operations and Maintenance Plan annually, and the updates shall be kept on-site for review by EPA and ADEM.

g. Preparedness Training Program

The Board shall develop and implement a Preparedness Training Program to ensure that all Board personnel are fully aware of, and able to efficiently implement, the Contingency Plan for Sewer Systems and WWTFs. The Preparedness Training Program shall include specialized training courses

and annual field trials.

24. Pump Station Operation Program

By August 1, 2002, the Board shall develop and submit to EPA, ADEM and MBW the Pump Station Operation Program described herein. This Deliverable is subject to Review Level 2. The Board shall maintain all program and implementation documentation on-site for review by EPA and ADEM.

a. Scheduled Pump Station Operation Program

The Board shall develop and implement written policies and procedures, including performance measures, for routine operation of both manned and un-manned pump stations. At a minimum, the Scheduled Pump Station Operation Program shall include the following procedures: (i) reading and recording information from the elapsed time meters, (ii) recording information from the pump start counters, (iii) observing wet well conditions and grease accumulation, (iv) checking and re-setting wet well set points, as necessary, to improve system performance, (v) checking and recording system pressure, (vi) checking SCADA components, (vii) checking alarms and stand-by power and (viii) identifying and scheduling routine and preventative maintenance needs. The Scheduled Pump Station Operation Program shall include the development of operations schedules, routes, priorities, and reporting and recordkeeping requirements using standard forms. The Board shall update the Scheduled Pump Station Operation Program annually, and the updates shall be kept on-site for review by EPA and ADEM.

b. Emergency Pump Station Operation Program

The Board shall develop and implement written policies and procedures, including performance measures, for emergency operation of both manned and un-manned pump stations that experience equipment failure or loss of electrical power. At a minimum, the Emergency Pump Station Operation Program shall include the following procedures: (i) procedures for initiating emergency maintenance, (ii) procedures for acquiring and maintaining stand-by power sources such as portable generators, (iii) procedures for acquiring and maintaining portable pumps for use when pump stations are inoperable, and (iv) procedures for determining the need to initiate the Contingency Plan for Sewer Systems and WWTFs. The Emergency Pump Station Operation Program shall include the development of reporting and recordkeeping requirements using standard forms. The Board shall update the Emergency Pump Station Operation Program annually, and the updates shall be kept on-site for review by EPA and ADEM.

25. Corrosion Control Program

By August 1, 2002, the Board shall develop and submit to EPA, the State and MBW written policies and procedures, including performance measures, to minimize introduction of substances to the Wastewater Collection and Transmission Systems that cause or may cause corrosion of infrastructure and to minimize corrosion in the Wastewater Collection and Transmission Systems (“Corrosion Control Program”). This Deliverable is subject to Review Level 2. The Board shall maintain all program and implementation documentation on-site for review by EPA and ADEM. At a minimum, the Corrosion Control Program shall include the following: (i) inspection of sewerage infrastructure for corrosion caused by hydrogen sulfide or other corrosives, (ii) development and implementation of site specific

corrosion control measures including, but not limited to, best management practices, (iii) identification of potential industrial and commercial sources of corrosive substances, (iv) identification and fulfillment of staffing and equipment needs for the Corrosion Control Program; (v) review and, if necessary, revision of sewer use ordinances giving the Board authority to implement the Corrosion Control Program; and (vi) development and implementation of a Corrosion Control Program information management system. Performance measures shall include, but shall not be limited to, the number of line breaks before and after implementation of the Corrosion Control Program, and the number of pump failures attributed to corrosion.

26. Grease Control Program

a. By August 1, 2002, the Board shall review and revise its current policies and procedures for the control of grease from industrial, commercial and residential users of the Wastewater Collection and Transmission Systems (“Grease Control Program”) and submit the Grease Control Program to EPA, ADEM and MBW. This Deliverable is subject to Review Level 1. Upon EPA’s approval of the Grease Control Program, the Board shall implement the Grease Control Program. Implementation of the Grease Control Program shall begin no later than October 1, 2002.

b. At a minimum, as part of the Grease Control Program, the Board shall:

i. conduct a review of the Board’s legal authority to control the discharge of grease into the Wastewater Collection and Transmission Systems, identify any deficiencies in such legal authority, and develop and propose for enactment by the City Council those revisions to the Board’s legal authority that are necessary to address such deficiencies, including the possibility of

instituting a permit program;

ii. specify accepted devices to control the discharge of grease into the Wastewater Collection and Transmission System and appropriate deadlines for the installation of such devices;

iii. establish and implement standards for the design and construction of grease control devices including standards for capacity and accessibility, site maps, design documents and as-built drawings;

iv. establish and implement grease control device management, operation and maintenance standards and/or best management practices that address on-site record keeping requirements, cleaning frequency, cleaning standards, use of additives, and ultimate disposal;

v. establish and implement construction inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements, to assure that grease control devices are constructed in accordance with established design and construction standards;

vi. require that all new commercial and industrial facilities be constructed with appropriate grease control devices and prohibit the operation of any new facility without the installation of the required grease control device;

vii. establish and implement compliance inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements to assure that grease control devices are being managed, operated and maintained in accordance with the established management, operation and maintenance standards and/or best management practices;

viii. develop, propose for enactment by the City Council, and implement an ordinance giving the Board the authority to establish and implement an enforcement program to assure compliance with the Grease Control Program, including but not limited to the imposition of civil penalties and injunctive relief;

ix. establish and implement a compliance assistance program to facilitate training of grease generators and their employees;

x. establish and implement a public education program directed at reducing the amount of grease entering the Wastewater Collection and Transmission Systems from private residences;

xi. establish and fulfill staffing and equipment requirements to ensure effective implementation of the Grease Control Program;

xii. establish and implement performance indicators to be used by the Board to measure the effectiveness of the Grease Control Program. One such performance indicator shall be the reduction in frequency of SSOs attributed, in whole or in part, to the introduction of grease to the Wastewater Collection and Transmission Systems; and

xiii. monitor the method and location of disposal of grease removed from accepted grease control devices. The Board shall require all commercial and industrial facilities that operate grease control devices to complete a standard form at the time that grease is removed from a grease control device. The facility shall be required to provide the date and time the grease was removed, the identity of the grease hauler, the amount of grease removed by volume, and the intended final disposal location. At the time grease is removed from a grease control device, the Board shall also

require the facility to obtain written certification from the grease hauler that disposal will comply with all federal, state and local laws and regulations. Once disposal occurs, the Board shall require the facility to obtain written certification from the grease hauler of the actual disposal location and that the disposal, in fact, complied with all federal, state and local laws and regulations. The facility shall be required to retain all such forms on its premises for inspection by the Board.

c. The Board shall include, in each Quarterly Report required pursuant to Section XXI of this Consent Decree, a cumulative table that shows: (i) the number of commercial and industrial facilities required to have grease control devices; (ii) the grease control device capacity required by each facility as the Board acquires that information in the implementation of its obligations under this Paragraph (for example, by conducting inspections and through enforcement); (iii) the actual capacity installed; (iv) the dates and numbers of inspections of commercial and industrial facilities; and (v) any enforcement action taken, the status of the action and the outcome.

27. Pump Station Preventative Maintenance Program

a. Except as set forth in subparagraph (b) below, by August 1, 2002, the Board shall develop and submit to EPA, ADEM and MBW the Pump Station Preventative Maintenance Program described herein. This Deliverable is subject to Review Level 2. The Board shall maintain all program and implementation documentation on-site for review by EPA and ADEM.

b. Short-Term Pump Station Certification

By April 30, 2002, the Board shall certify to EPA and ADEM that all manned and unmanned pump stations are in working order and in a state of good repair. The Board has hired the consulting firm of MontgomeryWatson Harza to evaluate the design and operating efficiency of 116 of

the Board's manned and un-manned pump stations. By April 30, 2002, the Board shall propose a schedule to EPA and ADEM to implement all upgrades identified by Montgomery Watson Harza. This Deliverable is subject to Review Level 2.

c. Electrical Maintenance Program

At a minimum, the Electrical Maintenance component of the Pump Station Preventative Maintenance Program shall include the following: (i) identification and provision of all personnel and equipment needed to perform all necessary electrical maintenance, (ii) establishment of standard electrical maintenance procedures, (iii) establishment of priorities for the scheduling of necessary electrical maintenance, (iv) development and implementation of standard electrical maintenance forms, (v) establishment of record-keeping requirements for all electrical maintenance performed, and (vi) integration of all data collected pursuant to this subparagraph with the Board's information management systems.

d. Mechanical Maintenance Program

At a minimum, the Mechanical Maintenance component of the Pump Station Preventative Maintenance Program shall include the following: (i) identification and provision of all personnel and equipment needed to perform all necessary mechanical maintenance, (ii) establishment of standard mechanical maintenance procedures, (iii) establishment of priorities for scheduling of necessary mechanical maintenance, (iv) development and implementation of standard mechanical maintenance forms, (v) establishment of record-keeping requirements for all mechanical maintenance performed, and (vi) integration of all data collected pursuant to this subparagraph with the Board's information management systems.

28. Force Main Preventative Maintenance Program

a. By August 1, 2002, the Board shall develop and submit to EPA and ADEM the Force Main Preventative Maintenance Program described herein. This Deliverable is subject to Review Level 2. The Board shall maintain all program and implementation documentation on-site for review by EPA and ADEM.

b. Air Release Valve Maintenance Program

At a minimum, the Air Release Valve Maintenance component of the Force Main Preventative Maintenance Program shall include the following: (i) identification and provision of all personnel and equipment needed to perform all necessary force main preventative maintenance, (ii) establishment of procedures for all such maintenance, including but not limited to the exercise of all air release valves on a routine basis in accordance with manufacturer specifications, (iii) establishment of priorities for the scheduling of all such maintenance, (iv) development and implementation of standard maintenance forms, (v) establishment of record-keeping requirements for all maintenance performed, and (vi) integration of all data collected pursuant to this subparagraph with the Board's information management systems.

c. Valve Exercise Program

At a minimum, the Valve Exercise component of the Force Main Preventative Maintenance Program shall include the following: (i) identification and provision of all personnel and equipment needed to perform the routine exercise of all force main gate valves, (ii) establishment of procedures and a schedule for the exercise of all force main gate valves on a routine basis, but no less frequently than every twelve (12) months, (iii) development and implementation of standard forms, (iv)

establishment of record-keeping requirements for all force main gate valve exercises performed, and (v) integration of all data collected pursuant to this subparagraph with the Board's information management systems.

29. Gravity Line Preventative Maintenance Program

a. By August 1, 2002, the Board shall develop and submit to EPA, ADEM and MBW the Gravity Line Preventative Maintenance Program described herein. This Deliverable is subject to Review Level 2. The Board shall maintain all program and implementation documentation on-site for review by EPA and ADEM.

b. Scheduled Hydraulic Cleaning Program

The Scheduled Hydraulic Cleaning component of the Gravity Line Preventative Maintenance Program shall include the following: (i) identification and provision of all personnel and equipment needed to perform all necessary hydraulic cleaning, (ii) determination of the frequency of cleaning of specific lines, (iii) establishment of standard procedures for all such cleaning, (iv) establishment of priorities for the scheduling of all such cleaning, (v) development and implementation of standard forms, (vi) establishment of record-keeping requirements for all maintenance performed, and (vii) integration of all data collected pursuant to this subparagraph with the Board's information management systems, including performance measures.

c. Root Control Program

The Root Control component of the Gravity Line Preventative Maintenance Program shall include the following: (i) identification and provision of all personnel and equipment needed to perform all necessary root control, (ii) determination of the frequency of root control needed for specific lines,

(iii) establishment of procedures for all root control, (iv) establishment of priorities for the scheduling of all root control, (v) development and implementation of standard forms, (vi) establishment of record-keeping requirements for all root control performed, and (vii) integration of all data collected pursuant to this subparagraph with the Board's information management systems, including performance measures.

d. Manhole Preventative Maintenance

The Manhole Preventative Maintenance component of the Gravity Line Preventative Maintenance Program shall include the following: (i) identification and provision of all personnel and equipment needed to perform all necessary manhole preventative maintenance, (ii) determination of the frequency of manhole preventative maintenance, (iii) establishment of procedures for all manhole preventative maintenance, (iv) establishment of priorities for the scheduling of all manhole preventative maintenance, (v) development and implementation of standard forms, (vi) establishment of record-keeping requirements for all maintenance performed and (vii) integration of all data collected pursuant to this subparagraph with the Board's information management systems, including performance measures.

30. Maintenance of Rights-of-Way Program

a. By August 1, 2002, the Board shall develop and submit to EPA, ADEM and MBW the Maintenance of Rights-of-Way Program described herein. This Deliverable is subject to Review Level 2. The Board shall maintain all program and implementation documentation on-site for review by EPA and ADEM.

b. The Maintenance of Rights-of-Way Program shall include the following: (i)

identification of the number and location of all rights-of-way, easements, or other property interests held by the Board that are related to the Wastewater Collection, Transmission and Treatment Systems, (ii) identification of all sewer-line stream crossings; (iii) determination of the routine maintenance required for each such sewer-line stream crossing and property interest, (iv) establishment of priorities for scheduling all such routine maintenance, (v) identification and provision of all personnel and equipment needed to perform all such routine maintenance, (vi) development and implementation of standard forms, (vii) establishment of record-keeping requirements for all maintenance performed, and (viii) integration of all data collected pursuant to this subparagraph with the Board's information management systems, including performance measures.

31. Unscheduled Maintenance Program

By March 1, 2003, the Board shall develop and submit to EPA, ADEM and MBW the Unscheduled Maintenance Program described herein. This Deliverable is subject to Review Level 2. The Board shall maintain all program and implementation documentation on-site for review by EPA and ADEM. At a minimum, the Unscheduled Maintenance Program shall include the following: (i) establishment of a process for responding to customer complaints and other problems, (ii) determination of the type of unscheduled maintenance likely to be needed for specific lines, (iii) establishment of priorities for conducting unscheduled maintenance, (iv) identification and provision of all personnel and equipment needed to perform all reasonably anticipated unscheduled maintenance, (v) collection of information to support a root cause analysis for all system components that require unscheduled maintenance, (vi) distribution, as needed, of accurate as-builts and maps to personnel performing unscheduled maintenance, (vii) development and implementation of the use of standard

forms for all unscheduled maintenance, (viii) establishment of record-keeping requirements for all maintenance performed, (ix) integration of all data collected pursuant to this subparagraph with the Board's information management systems, including performance measures, and (x) establishment of protocols to be followed for initiating the Contingency Plan for Sewer Systems and WWTFs.

32. Coordination with the City of Mobile and Other Governmental Bodies

By August 1, 2002, the Board shall develop and submit to EPA, ADEM and MBW written policies and procedures, including performance measures, for regular coordination with the City of Mobile, Mobile County and any other affected government, to ensure compliance with this Consent Decree, the CWA and the AWPCA, and to minimize disruption of traffic as the Board undertakes sewer maintenance, rehabilitation, construction, repair and improvements. This Deliverable is subject to Review Level 2. At a minimum, the Board shall: (i) identify those representatives of the City, County, or other affected government, who have responsibility for street maintenance and improvements, storm drain maintenance and improvements, issuing building, construction and occupancy permits, and issuing occupancy permits to facilities which require grease control devices pursuant to Paragraph 26 of this Consent Decree; (ii) meet regularly with such representatives to coordinate the work of the Board with the work of the City, County, or other affected government; (iii) establish procedures for notifying such representatives of work to be performed by the Board which may impact the work of the City, County, or other affected government; (iv) develop and implement standard forms for all communications with such representatives pursuant to this Paragraph; and (v) keep records of all such communications. The Board shall maintain all program and implementation documentation on-site for review by EPA and ADEM.

## **IX. WATER QUALITY MONITORING**

### **33. Establishing a Plan**

Except as specified in Paragraph 36 below, by March 1, 2002, the Board shall develop and implement a written Water Quality Monitoring Program that will require the Board to: (a) identify Unpermitted Discharges originating at sewer pipe creek crossings and other isolated or remote sewer locations adjacent or in proximity to waterways; (b) locate the source or sources of such Unpermitted Discharges; (c) assess the impact upon the environment and public health of such Unpermitted Discharges; and (d) measure the Board's performance under this Consent Decree. The Water Quality Monitoring Program is subject to Review Level 1. The Water Quality Monitoring Program is in addition to any other sampling required by the NPDES Permits. At a minimum, the Water Quality Monitoring Plan shall incorporate the components described in Paragraphs 34 through 38 below. The Board may, in its discretion, contract with a third party to perform all or some of the sampling required pursuant to this Section.

### **34. Routine Water Quality Monitoring**

The Board shall develop and implement a Routine Water Quality Monitoring Program to determine the existence of Unpermitted Discharges originating at or in proximity to stream crossings or other isolated and remote sewer locations. The Program shall provide for scheduled sampling during both wet-weather and non-wet-weather periods from a network of monitoring stations located in each of the following drainage basins: Halls Mill, Eslava, Three-Mile, Eight-Mile, Ziebach and Muddy Creek. The Program shall propose the exact number and location of monitoring points dependent upon drainage configuration and other factors, but in no event shall the number of monitoring points be less

than 24. The Program shall include sampling all such stations at least twice per month for fecal coliform and dissolved oxygen. Independent of the sampling described above, the Board shall propose the use of Rhodamine dye monitoring as a component of the Routine Water Quality Monitoring Program. The Routine Water Quality Monitoring Program shall include a map of all sampling locations, and shall specify sampling frequency, sampling parameters, standard sampling procedures, and quality assurance/quality control procedures. The Routine Water Quality Monitoring Program shall also include an information management system.

35. Investigative Water Quality Monitoring

The Board shall develop and implement an Investigative Water Quality Monitoring Program to determine whether the Wastewater Collection and Transmissions System and/or any WWTF is a source of pollution identified as a result of complaints, routine water quality monitoring pursuant to Paragraph 34, or by other means. The Plan shall specify the conditions under which the Board will initiate an investigation under this Paragraph. The Investigative Water Quality Monitoring Program shall include a requirement for development of a map of all actual sampling locations, and shall specify a protocol for determining sampling parameters to be used depending on the type of pollution identified or suspected. The Investigative Water Quality Monitoring Program shall also include standard sampling and quality assurance/quality control procedures, and an information management system. The Board may propose the use of Rhodamine dye monitoring as a component of the Investigative Water Quality Monitoring Program. Any such monitoring shall be conducted in both dry and wet weather as follows:

a. Dry Weather Dye Monitoring

The purpose of dry weather dye monitoring shall be to detect chronic line leaks. Dry weather sampling shall be conducted for a definite period of time, e.g., one week (“Testing Period”). During the sampling period, the Board shall collect fecal coliform samples at least twice a day at locations to be identified based on stream reconnaissance. The Board shall introduce Rhodamine WT tracer dye into the Wastewater Collection, Transmission and Treatment System at a constant rate in the upstream portion of each sewer branch that is in proximity to a waterway. The first segment shall be at the beginning of a Main Sewer Line. The Board shall place dye collection packets into the distal portion of each stream segment selected for testing. The Board shall take fluorometric measurements in the distal most portion of the identified stream segment to identify the presence or absence of the tracer dye. The timing and duration of such measurements shall be dependent upon both sewer and stream flow rates. At the conclusion of the Testing Period, the dye collection packets will be removed and analyzed to identify low level leakage not detected by flurometric measurements.

b. Wet Weather Dye Monitoring

The purpose of wet weather dye monitoring shall be to detect capacity problems. The wet sampling period shall be defined using rainfall and stream stage data or sewer flow data. During the sampling period, the Board shall collect fecal coliform samples four to six times a day at locations to be identified based on stream reconnaissance. The Board shall introduce Rhodamine WT tracer dye into the Wastewater Collection, Transmission and Treatment System at a constant rate in the upstream portion of each sewer branch that is in proximity to a waterway. The first segment shall be at the beginning of a Main Sewer Line. The Board shall place dye collection packets into distal portion of

each stream segment selected for testing. The Board shall take fluorometric measurements in the distal most portion of the identified stream segment to identify the presence or absence of the tracer dye. The timing and duration of such measurements shall be dependent upon both sewer and stream flow rates. At the conclusion of the Testing Period, the dye collection packets will be removed and analyzed to identify low level leakage not detected by fluorometric measurements.

c. Location of Source of Leak

If Rhodamine WT dye is detected in a waterway, the Board shall localize the detected leak by taking fluorometric measurements progressively upstream in each branch to localize the dye source. If dye is detected, sampling shall continue progressively upstream to the next branch point until the stream segment containing the source of the dye is isolated. The sewer line adjacent to the isolated stream shall be examined to identify the source of the leak. If necessary, the isolated stream segment shall be sampled at defined intervals to identify the source of the leak. Fecal coliform samples shall also be taken in each of the monitoring locations. After repair of the leak, the Board shall take fluorometric measurements and shall use dye collection packets downstream of the repair to ensure that the repair has been successful. The Board shall notify EPA, ADEM and MBW of the dates and times of all sampling pursuant to this Paragraph pursuant to the reporting requirements of Paragraph 38.

36. Water Quality Monitoring for Spill Impact

By August 1, 2002, the Board shall develop and implement a Spill Impact Water Quality Monitoring Program to assess the impact upon public health and the environment of pollution resulting from any Unpermitted Discharges and to assist EPA, the State and public health authorities in assessing the need for appropriate environmental and/or public health response. The Board shall consult with

ADEM and Public Health Authorities during development and implementation of the Spill Impact Water Quality Monitoring Program. As part of the Spill Impact Water Quality Monitoring Program, the Board shall develop protocols for mapping all actual sampling locations, for determining the frequency and duration of sampling, and for selecting the parameters to be sampled. The sampling protocol shall include sampling upstream (control) and downstream of the spill for fecal coliform, water quality indicators such as dissolved oxygen, and biological parameters using Stream Rapid Bioassessment. The sampling protocol also shall identify the circumstances under which the Board shall sample for those Priority Pollutants known to be present in the wastewater of any Significant Industrial User who discharges into the portion of the Wastewater Collection and Transmissions Systems that is affected by the Unpermitted Discharge. The Program shall require continued monitoring until all sampled parameters have reached control levels. The Spill Impact Water Quality Monitoring Program shall also include standard sampling and quality assurance/quality control procedures, and an information management system. Among other things, the information management system shall contain a list of the Priority Pollutants, if any, in wastewater discharged by any Significant Industrial User to the Wastewater Collection and Transmission Systems, and the lines affected by any such discharge. The Board shall notify EPA, ADEM and MBW of the dates and times of all sampling pursuant to this Paragraph pursuant to the reporting requirements of Paragraph 38.

37. Quality Assurance, Sampling, Data Analysis

The Board shall use analytical procedures, sample containers, preservation techniques, and sample holding times that are specified in 40 C.F.R. Part 136. Upon request, the Board shall allow split or duplicate samples to be taken by EPA, the State, or their authorized representatives. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State may deem necessary.

38. Reporting

The Board shall submit to EPA, ADEM and MBW, and shall simultaneously place in the Public Document Repository, quarterly reports that: (a) describe the actions which have been taken under this Section during the previous quarter; (b) include a summary of all results of sampling and tests and all other data received or generated by the Board or its contractors or agents in the previous quarter; and (c) describe all actions including, but not limited to, data collection, which are scheduled for the next quarter. The Board shall submit such quarterly reports to EPA, ADEM and MBW pursuant to Paragraph 98(d).

**X. SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

39. In partial satisfaction of Plaintiffs' claims, the Board shall perform and complete the Supplemental Environmental Projects ("SEPs") set forth in Appendix A, which have the objective of securing significant environmental or public health protection and improvements. The Board shall complete the SEPs in accordance with the schedule and requirements set forth in Appendix A. All SEPs shall be completed by December 31, 2004. SEP 1 shall require the Board to install new private residential service laterals in low income areas within its service area. SEP 2 shall require the Board to

fund the acquisition of environmentally valuable habitat in Mobile County through the Alabama Forever Wild Program. SEP 3 shall require the Board to fund the acquisition of environmentally valuable habitat in the Dog River watershed in Mobile County. SEP 4 shall require the Board to partially fund the creation and maintenance of a publicly available database of water quality monitoring in Mobile County.

40. The total expenditure for SEP 1 shall be not less than the present value of \$2,000,000. The total expenditure for the SEP 2 shall be not less than the present value of \$300,000. The total expenditure for the SEP 3 shall be not less than the present value of \$150,000. The total expenditure for the SEP 4 shall be not less than the present value of \$50,000. The Board shall include documentation of the expenditures made in connection with each SEP as part of the SEP Completion Reports described in Paragraph 43 below. In the event that the Board fails to perform and complete any of the SEPs as set forth in Appendix A, it shall pay stipulated penalties in accordance with Section XII (Stipulated Penalties).

41. The Board is responsible for the satisfactory completion of the SEPs in accordance with the requirements of this Decree. The Board shall be deemed to have satisfactorily completed SEPs 2, 3 and 4 upon the transfer of the sums set forth in Paragraph 40 to the respective escrow accounts described in Appendix A. The Board may use contractors and/or consultants in planning and implementing the SEPs. The State shall participate in the implementation of SEPs 2 and 3. MBW shall participate in the implementation of SEPs 3 and 4.

42. The Board hereby certifies that, as of the date of this Consent Decree, the Board is not required by any federal, state or local law or regulation to perform or develop the SEPs; nor is the Board required by agreement, grant or as injunctive relief in this or any other case to perform or

develop the SEPs. The Board further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEPs; nor will the Board realize any profit attributable to or associated with the SEPs, or receive any reimbursement for any portion of the SEPs from any other person.

43. **SEP Completion Report.** The Board shall complete SEP 1 by December 31, 2004, SEP 2 by August 1, 2002, SEP 3 by August 1, 2002, and SEP 4 by August 1, 2002. The Board shall submit a SEP Completion Report for each SEP to the United States, the State and MBW within thirty (30) days after completion of each SEP in accordance with Section XXII of this Consent Decree (Form of Notice). Each SEP Completion Report shall contain the following information, where appropriate:

- a. A detailed description of the SEP as implemented;
- b. A description of any implementation problems encountered and the solutions thereto;
- b. An itemization of all SEP costs and acceptable evidence of such costs;
- d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree, including Appendix A;
- e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions to the extent feasible); and
- f. Copies of any brochures, databases, software, etc. relating to the SEP.

44. **Periodic Reports.** While the SEPs are being planned and implemented, the Board shall

submit quarterly reports to EPA, ADEM and MBW describing the progress of the SEPs within one (1) Month after the end of each Calendar Quarter.

45. Following receipt of each SEP Completion Report described in Paragraph 43 above, EPA, after consultation with ADEM, will do one of the following in writing:

- a. accept the SEP Completion Report; or
- b. reject the SEP Completion Report, notifying the Board, in writing, of

deficiencies in the SEP Completion Report. If EPA rejects the SEP Completion Report, the Board shall have one Month from the date of receipt of EPA's notice in which to correct any deficiencies and submit a revised SEP Completion Report. If EPA rejects a revised SEP Completion Report the Board shall be subject to stipulated penalties in accordance with Paragraph 56. Stipulated penalties shall begin to accrue from the date that the revised SEP Completion Report is submitted and shall continue to accrue until an acceptable SEP Completion Report is submitted to EPA.

46. If EPA rejects a SEP Completion Report pursuant to subparagraph 45(b), EPA shall permit the Board the opportunity to object in writing to the notification of deficiency within ten (10) days of receipt of such notification. EPA and the Board shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement relating to EPA's notice of deficiency. If agreement cannot be reached on any issue in the notice of deficiency within this thirty (30) day period, EPA shall thereafter provide a written statement of its decision to the Board, which decision shall be final and binding upon the Board. Any such decision shall not be subject to Dispute Resolution. The Board agrees to comply with any SEP related requirements imposed by EPA's written decision.

47. If upon receipt of the SEP Completion Report, EPA, after consultation with ADEM, determines in its sole discretion that part or all of the SEPs have not been implemented in accordance with this Consent Decree, including Appendix A, and any statements of work, EPA may require the Board: (1) to perform additional tasks; (2) to repeat any deficient tasks; or (3) if specific tasks set forth in Appendix A were not performed at all, to perform such tasks. EPA shall provide any such requirement to the Board in writing.

48. If EPA requires the Board to perform additional tasks, as set forth in Paragraph 47, EPA shall permit the Board the opportunity to object in writing to the requirement to perform additional tasks within fourteen (14) days of receipt of such notification. EPA and the Board shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement relating to EPA's notice to perform additional work. If, within this thirty (30) day period, agreement cannot be reached on any issue in the notice to perform additional work, EPA shall provide a written statement of its decision to the Board, which decision shall be final and binding upon the Board. The Board agrees to comply with any SEP related requirements, consistent with Appendix A and any related statements of work, that are set forth by EPA in its written decision. In the event the SEPs are not substantially completed as required herein, as determined by EPA in its sole unreviewable discretion, stipulated penalties shall be due and payable by the Board to the United States in accordance with Paragraph 56.

49. The Board bears the burden of segregating eligible SEP costs from costs not eligible for SEP credit. Any cost evidence that contains costs that are both eligible and not eligible for SEP credits shall be disallowed in its entirety. For purposes of subparagraph 43(c), "acceptable evidence" includes

invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods or services for which payment is made. Canceled drafts are not acceptable evidence unless such drafts specifically identify and itemize the individual costs of the goods or services for which payment is made. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 97 below.

50. The Board hereby agrees that if, in estimating the cost of each SEP, the Board did not subtract the estimated savings achieved from deducting the cost of each SEP in calculating state and federal taxes, any funds expended by the Board in the performance of each SEP shall not be deductible for purposes of such taxes. The Board, at the time of completion of each SEP, shall submit to the United States and the State written certification that any funds expended in the performance of each SEP have not been and will not be deducted for purposes of such taxes.

51. In the event that the Board does not spend the present value attributed to a SEP pursuant to Paragraph 40 above, the Board will perform additional work on the SEP, as set forth in Appendix A, such that the total expenditure on the SEP equals or exceeds the required present value of the SEP.

52. Any public statement, oral or written, in print, film, or other media, made by the Board making reference to the SEPs shall include the following language, "This project was undertaken in connection with the settlement of a civil enforcement action taken by the United States for violations of the Clean Water Act."

## **XI. CIVIL PENALTY**

53. Within thirty (30) days after entry of this Consent Decree, the Board shall pay

\$114,000 plus interest to the United States and the State in partial satisfaction of the civil claims of the United States alleged in the Complaint. Within seven (7) days of the Board's signature of this Consent Decree, the amount to be paid pursuant to this Paragraph shall be deposited by the Board, pending entry of this Consent Decree by the Court, in an interest-bearing escrow account in a federally chartered bank. The terms of the escrow agreement and the escrow agent shall be subject to approval by the United States. The amount in such escrow account, including accrued interest, shall be held in trust for the benefit of the United States and the State pending entry of this Consent Decree by the Court. Within five (5) days after the Date of Entry, the Board shall distribute \$99,000 of the principal plus a proportionate amount of accrued interest in such account to the United States and \$15,000 of the principal plus a proportionate amount of accrued interest in such account to the State, in satisfaction of the Board's obligations under this Paragraph. Payment of accrued interest in such account shall be in addition to and shall not be applied against amounts owed by the Board under this Consent Decree. The Board shall bear responsibility for any tax liability, fees or costs arising from the escrow account.

54. Payment to the United States shall be made by electronic funds transfer, in accordance with written instructions to be provided by the United States after lodging of this Consent Decree. The costs of such electronic funds transfer shall be the responsibility of the Board. The Board shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to the United States, the State and MBW as specified in Section XXII (Form of Notice) below. The transmittal letter shall reference the case name, USAO File Number, and DJ No. 90-5-1-1-06985. Payment to the State shall be made by certified check made payable to the

Alabama Attorney General for appropriate distribution. The Board shall send the certified check via registered mail to the Alabama Attorney General, 11 South Union Street, Montgomery, AL 36130.

The transmittal letter shall reference the case name and docket number.

55. The Board shall not claim as a deduction on federal or state income tax returns, the civil penalty or any portion thereof, any accrued interest paid to the United States or the State provided for in this Section, or any stipulated penalties provided for in Section XII below.

**XII. STIPULATED PENALTIES**

56. In addition to the authorities described in Paragraph 16(a) through (d), the United States shall have the discretion to assess the following stipulated penalties for each violation described below:

a. Unpermitted Discharges.

i. For any Unpermitted Discharge that occurs after August 1, 2003:

Length of Time after Aug. 1, 2003	Penalty Per Violation Per Day:
0 - 12 Months	\$500
13-24 Months	\$600
more than 24 Months	\$750

ii. For any Unpermitted Discharge that occurs on or before August 1, 2003, the Board shall be subject to a stipulated penalty of \$250 per day per violation.

b. Delays in Submission of Deliverables. The Board shall be subject to the following stipulated penalties for each failure to timely submit a Deliverable or other submittal required pursuant to this Decree to EPA or the State, whether in draft or final form:

Number of Violations	Penalty Per Violation Per Day
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1 <sup>st</sup> through 10 <sup>th</sup>	\$250
10 <sup>th</sup> through 20 <sup>th</sup>	\$500
21 <sup>st</sup> or more	\$1,000

c. Failure to Correct Deficiencies in Submitted Deliverables. The Board shall be subject to the following stipulated penalties for each failure to timely correct deficiencies identified by EPA and/or ADEM in Deliverables pursuant to this Decree:

Period of Noncompliance	Penalty Per Violation Per Day
1 - 14 days	\$500
15 - 30 days	\$1,000
31 - 60 days	\$1,500
more than 60 days	\$2,000

d. Delays in Completion of Work Other Than Submission of Deliverables. The Board shall be subject to the following stipulated penalties for each failure to timely complete any component of the Work, other than a failure to timely submit a Deliverable (addressed by subparagraph (b) above), or failure to timely complete a SEP (addressed by subparagraph (f) below), in accordance with all schedules established in this Consent Decree, or subsequently approved by EPA pursuant to this Consent Decree:

Period of Noncompliance	Penalty Per Violation Per Day
1 - 14 days	\$1,000
15 - 30 days	\$2,000
31 - 60 days	\$3,000
60 - 180 days	\$4,000
over 180 days	\$7,500

e. Failure Related to System Capacity Assurance Program. If the Board fails to complete any component of the Work required by Paragraph 20, upon written notice by the United States to the Board, the United States shall have the discretion, in addition to the imposition of stipulated penalties

as provided in subparagraph (d), to prohibit the Board from authorizing any sewer connections in the Sewerbasins where such Work has not been completed. The prohibition of sewer connections shall terminate upon completion of the required Work and a demonstration of Adequate Treatment Capacity, Adequate Transmission Capacity and Adequate Collection Capacity pursuant to subparagraph 20(c) within that Sewerbasin, or by written agreement of EPA after a reasonable opportunity for review and comment by ADEM. If the Board allows any sewer connection prohibited by this Consent Decree, the Board shall be subject to a stipulated penalty of \$27,500 for each prohibited sewer connection.

f. Delays in Completion of SEPs. The Board shall pay stipulated penalties for the failure to meet the milestones set forth in Appendix A as follows:

Period of NonCompliance	Penalty Per Violation Per Day
1 - 14 days	\$500
15 - 30 days	\$1,000
31 - 60 days	\$2,000
over 60 days	\$3,500

g. Rejection of SEP Completion Reports. In the event that the United States rejects a SEP Completion Report as set forth in subparagraph 45(b) above, the Board shall pay \$500 per day per report until an acceptable SEP Completion Report is submitted to EPA.

h. Failure to Substantially Complete a SEP. In addition to the requirements of Section X (Supplemental Environmental Projects), in the event that the Board fails to substantially complete a SEP, the Board shall pay a stipulated penalty equal to 25 percent of the present value of the SEP as set forth in Paragraph 40.

i. Delay in Payment of Penalty. The Board shall pay to the United States and/or the

State, as applicable, a stipulated penalty of \$2,000 for each day that the Board is late in paying the civil penalty required under Paragraph 53.

j. All Other Violations. The Board shall pay a stipulated penalty of \$500 per violation per day for any violation of the Consent Decree that is not specified in this Paragraph.

57. Stipulated penalties shall automatically begin to accrue on the first day the Board fails either to meet any of the schedules of performance required by this Consent Decree or to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity, but need not be paid except as provided in Paragraphs 58 through 60. Payment of stipulated penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States or the State by reason of the Board's failure to comply with requirements of this Consent Decree, and any applicable Federal, State or local laws, regulations, NPDES Permits and all other applicable permits.

58. Except as to stipulated penalties due to the State pursuant to Paragraph 56(i) (Delay in Payment of Penalty), stipulated penalties shall be paid within thirty (30) days of EPA's written demand for payment of stipulated penalties. Stipulated penalties due to the State pursuant to Paragraph 56(i) (Delay in Payment of Penalty) shall be paid within thirty (30) days of ADEM's written demand. Stipulated penalties shall be paid to the United States and the State in accordance with the payment procedures of Paragraph 54. Copies of any checks and the transmittal letters shall be sent simultaneously to the Chief, Environmental Enforcement Section, United States Department of Justice, Post Office Box 7611, Ben Franklin Station, Washington, D.C. 20044, and shall reference DJ No. 90-5-1-1-06985; and to the Director, Water Management Division, United States Environmental Protection Agency, Region 4, 61

Forsyth Street S.W., Atlanta, Georgia 30303.

59. In the event that a stipulated penalty is not paid when due, the stipulated penalty shall be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961(a).

60. Upon receipt of EPA's or, as applicable, ADEM's written demand for payment of a stipulated penalty, the Board may dispute its liability for such stipulated penalty pursuant to the dispute resolution provisions of Section XIV of this Consent Decree. In that event, any stipulated penalties that are ultimately determined to be due under this Consent Decree shall be paid within twenty (20) days of the date of the United States' (or as applicable, the State's) written decision or, if applicable, any Court order.

61. The payment of stipulated penalties shall not alter in any way the Board's obligation to complete the performance of all activities required under this Consent Decree.

62. Except for the payment of a penalty to the State pursuant to subparagraph 56(i) (Delay in Payment of Penalty), eighty percent (80%) of each payment made pursuant to this Section shall be made to the United States and twenty percent (20%) shall be paid to the State of Alabama, unless otherwise noted.

### **XIII. FORCE MAJEURE**

63. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of the Board or of any entity employed by the Board, including, but not limited to, its consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree, despite the Board's best efforts to fulfill the obligation. The requirement that the Board 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 potential Force Majeure event (1) as it is occurring and (2) following the potential Force Majeure event, such that delay is minimized to the greatest extent possible. Force Majeure does not include unanticipated or increased costs, financial inability to perform an obligation required by this Consent Decree or a failure to achieve compliance with

the NPDES permits, the AWPCA, or the CWA. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications, on the part of the Board do not constitute Force Majeure.

64. Solely for purposes of this Consent Decree, the Board shall be deemed to know of any circumstance of which the Board or any entity controlled by Defendant, including Defendant's consultants and contractors, knew or should have known.

65. When circumstances are occurring or have occurred which may delay the completion of any requirement of this Consent Decree, whether or not due to a Force Majeure event, the Board shall so notify EPA and ADEM orally and electronically whenever possible, as soon as possible but no later than twenty-four (24) hours after the Board learns, or in the exercise of reasonable diligence under the circumstances should have learned, of the delay or anticipated delay. Such oral notice shall be provided to EPA and the State pursuant to Section XXII (Form of Notice). Written notice shall be provided to EPA and the State within five (5) days of oral notice, with a copy of such notice to MBW. The notice shall specifically reference this Section of the Decree and describe in detail: the basis for the Board's contention that it experienced a Force Majeure event if the Board intends to make a claim of Force Majeure; the anticipated length of the delay; the precise cause or causes of the delay; the measures taken or to be taken to prevent or minimize the delay; and the timetable by which those measures will be implemented. Failure to so notify EPA and ADEM shall constitute a waiver of any claim of Force Majeure as to the event in question.

66. If EPA, after consultation with ADEM, finds that a delay in performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period not exceeding

the delay actually caused by such event, and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XIV shall apply, and the Board 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.

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

#### **XIV. DISPUTE RESOLUTION**

68. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism available for resolving disputes under this Decree. The procedures of this Section shall not extend, however, to disputes concerning the modification, revocation, or reissuance of NPDES permits, which shall be governed by prevailing law. Any dispute concerning the Board's failure to comply or delayed compliance with its obligation to pay the stipulated penalty to the State pursuant to Paragraph 56(i) (Delay in Payment of Penalty), or its obligation to pay attorneys' fees to MBW pursuant to Paragraph 93, shall be resolved by filing a motion with the Court.

69. Disputes with respect to any portion of a requirement of this Consent Decree shall not delay implementation of any portion of that requirement that is not in dispute unless EPA agrees in writing, after

consultation with the State and MBW, to a stay of the Board's obligation to perform.

70. The Board shall invoke the dispute resolution procedures of this Section by notifying all other Parties in writing of the matter(s) in dispute and of the Board's intention to resolve the dispute under this Section. The notice shall: (1) outline the nature of the dispute; (2) include the Board's proposed resolution; (3) include all information or data relating to the dispute and the proposed resolution; and (4) request negotiations pursuant to this Section to resolve the dispute. The Board and the United States shall then attempt to resolve the dispute informally for a period of thirty (30) calendar days from the date of the notice. The State and MBW shall have the right to participate in negotiations between the United States and the Board as to disputes under this Consent Decree and may each file a written statement of position. However, resolution of the dispute shall be solely between the United States and the Board. The period for such negotiations may be extended by written agreement of the United States and the Board. Notice of any such extension shall be provided by the Board to the State and MBW.

71. An administrative record of the dispute shall be maintained by the United States and shall contain all notices, statements of position, and determinations, including supporting documentation, submitted pursuant to this Section. Where appropriate, the United States may allow submission of supplemental statements of position by the State, MBW and the Board.

72. If the Board and the United States cannot resolve the dispute by the end of the period for negotiations pursuant to Paragraph 70, the United States shall thereafter provide a written final decision regarding the dispute. The decision of the United States shall be binding, unless the Board petitions the Court for review of the written decision by filing a petition with the Court within fifteen (15) days of receiving the written decision. The petition shall set forth the nature of the dispute with a proposal for its

resolution. Within thirty (30) days of receiving a Petition filed with the Court pursuant to this Paragraph, the United States may file a response, which may include an alternate proposal for resolution of the dispute. The United States shall consult with the State and MBW during preparation of its response.

73. Unless and until overturned or modified by the Court, the Board shall comply with the United States' written decision on the issues in dispute.

74. In any dispute concerning the adequacy of a submittal requiring EPA approval under this Consent Decree (e.g., if EPA decides to reject or require modification of such a submittal) no party shall present evidence to the Court (without EPA consent) unless the evidence is contained in a submission to EPA pursuant to Paragraph 70. The limitations of this Paragraph do not apply to the United States.

75. A dispute concerning EPA's failure to act on a submittal (i.e., to accept, require modification of, or reject the submittal), which the Board is required to submit for EPA's approval, shall be governed by the procedures of this Section. If the Board petitions the Court for resolution of such a dispute, the sole relief available shall be an order from the Court directing EPA to act on the submittal (i.e., to accept, require modification of, or reject the submittal) within an appropriate period of time.

76. In any dispute between the Board and the United States pursuant this Section, the Board shall have the burden of proving that the decision of the United States is arbitrary and capricious. Except as provided in this Consent Decree, agreed to in writing by the United States and the Board (after consultation with the State and MBW), or allowed by the Court, submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Consent Decree.

## **XV. RIGHT OF ENTRY**

77. Without limiting the authority otherwise available to them, the United States and State and

their authorized representatives and contractors shall have authority at all times, upon the presentation of credentials, to enter the premises of the Board to:

- a. Monitor the program of activities required by this Consent Decree;
- b. Verify any data or information submitted to the United States and State;
- c. Obtain samples from any portion of the WWTFs or Wastewater Collection and Transmission Systems;
- d. Inspect and evaluate any portions of the WWTFs or Wastewater Collection and Transmission Systems;
- e. Inspect and review any records required to be kept under the terms and conditions of this Consent Decree or any NPDES Permit, the CWA and the AWPCA; and
- f. Otherwise assessing the Board's compliance with federal and state environmental laws and this Consent Decree.

This provision of the Consent Decree is in addition to, and in no way limits or otherwise affects, the authority of the United States and State to conduct inspections, to require monitoring and to obtain information from the Board as authorized by law.

78. The United States and State agree to make available to the Board and to MBW the quality assured/quality controlled laboratory analytical results of samples obtained from the WWTFs and the Wastewater Collection and Transmission Systems during the term of this Consent Decree, and any non-privileged (including non-attorney work product) reports prepared concerning such results.

#### **XVI. NOT A PERMIT**

79. This Consent Decree is not and shall not be construed as a permit, nor a modification of

any existing permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, nor shall it in any way relieve the Board of its obligations to obtain permits for its WWTFs and related operations or facilities and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and State laws and regulations.

## **XVII. ONGOING COMPLIANCE OBLIGATIONS**

80. Nothing herein shall be construed to relieve the Board of the duty to comply with the CWA or the AWPCA, the regulations promulgated thereunder, and all applicable permits issued thereunder, or to relieve the Board of its duty to comply with applicable federal and State laws and regulations.

81. The United States and State, by their consent to the entry of this Consent Decree, do not warrant or aver in any manner that the Board's compliance with this Consent Decree will result in compliance with the provisions of the CWA, the AWPCA, or with the NPDES Permits.

82. Notwithstanding review or approval by the United States or State of any plans, reports, policies or procedures formulated pursuant to this Consent Decree, the Board shall remain solely responsible for any noncompliance with the terms of this Consent Decree, all applicable permits, the AWPCA, the CWA and regulations promulgated thereunder.

### **XVIII. NON-WAIVER PROVISIONS**

83. This Consent Decree constitutes a settlement of the civil claims for the violations alleged in the Plaintiffs' Complaints through the Date of Lodging.

84. Nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States or the State to seek penalties or further or additional injunctive relief under the CWA or other federal statutes or regulations, or State laws and regulations, except as expressly specified herein. The United States and State of Alabama reserve the right to file a civil action for statutory penalties or injunctive relief against the Board for any violations of the CWA and/or the AWPCA by the Board discovered after the Date of Lodging of this Consent Decree. This Consent Decree does not relieve the Board of any criminal liability.

85. This Consent Decree in no way affects or relieves the Board of any responsibility to comply with any federal, state, or local law or regulation. The Parties agree that the Board is responsible for achieving and maintaining compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits, except as set forth herein.

86. This Consent Decree does not limit or affect the rights of the Board, MBW, the State or the United States as against any third parties which are not parties to this Consent Decree. The Parties recognize that this Consent Decree resolves certain matters between the United States, the State, MBW and the Board, and that its execution does not preclude the Board from asserting any legal or factual position in any action brought against the Board by any person or entity not a party to this Consent Decree.

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

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

89. Obligations of the Board under the provisions of this Consent Decree to perform duties that may occur prior to the Date of Entry, shall be legally enforceable from the Date of Lodging. Liability for stipulated penalties, if applicable, shall accrue for violation of such obligations and payment of such stipulated penalties may be demanded by the United States after entry as provided in this Consent Decree.

90. This Consent Decree was negotiated, mutually drafted, and executed by the Parties in good faith to avoid further litigation. Neither the execution of this Consent Decree nor any action taken hereunder is an admission of any fact, liability or wrongdoing of any kind regarding any of the matters addressed in the Consent Decree.

#### **XIX. COSTS OF SUIT**

91. The United States, the State, MBW and the Board shall bear their own costs and attorneys' fees with respect to matters related to this Consent Decree, except as provided in Paragraphs 92 and 93.

92. In the event that the United States must seek stipulated penalties or otherwise seek to enforce this Consent Decree, the Board shall pay all attorneys' fees and costs incurred by the United States if the United States prevails in whole or part.

93. The Board agrees to pay MBW's attorneys fees/expenses (at the previously agreed rate) from the date of last itemization until the signing of the Consent Decree. Said payment shall be made by the Board within 10 days of the signing of the Consent Decree by MBW and the Board. MBW and its attorneys and consultants will make no further claim for attorneys fees, consulting fees or expenses incurred after the signing of the Consent Decree.

#### **XX. CERTIFICATION OF SUBMISSIONS/RECORD RETENTION**

94. The Board shall place all final Deliverables required by this Consent Decree, including SEP Completion Reports and SEP Progress Reports, in the Public Document Repository.

95. Unless otherwise required by the terms of this Consent Decree, the Board shall maintain copies of any documents, plans, reports, or records required by the NPDES Permits or which relate to the Board's performance under this Consent Decree, and all underlying research and data on which the Board has relied in preparing such materials, for a period of five (5) years from the date of such materials, or until termination of this Consent Decree, whichever is later. The Board shall require any independent contractor(s) implementing this Consent Decree also to retain such materials for a period of five (5) years, or until termination of this Consent Decree, whichever is later.

96. Upon request by EPA or ADEM, the Board shall submit within seven (7) days, for inspection and review by EPA or ADEM, any documents, plans, reports, or records required to be maintained or which relate to the Board's performance under this Consent Decree, and all underlying

research and data on which the Board has relied in preparing such materials.

97. In all notices, documents or reports submitted to the United States and/or State pursuant to this Consent Decree, the Board shall, by a responsible party of the Board as defined by 40 C.F.R. §122.22 or Part I(C)(1)(c) of the NPDES Permits, sign and certify each such notice, document and report as follows:

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

## **XXI. REPORTING REQUIREMENTS**

98. Beginning April 30, 2002, and one month after the end of each Calendar Quarter thereafter, the Board shall submit to EPA, ADEM and MBW, and simultaneously place in the Public Document Repository, a progress report containing the following information:

a. The management, Operations, and/or Maintenance measures implemented by the Board pursuant to this Consent Decree during the previous Calendar Quarter and identification of any previously reported management, Operations and/or Maintenance measures that were discontinued since the previous report;

b. A description of the status of compliance or non-compliance with the requirements of this Decree and, if applicable, including the reasons for non-compliance;

c. A spreadsheet and summary containing the information collected by the Board pursuant to Paragraph 21 during the previous Calendar Quarter; and

d. The water quality monitoring data and other information required pursuant to Paragraph 38.

Compliance with this Paragraph does not relieve the Board of any other reporting obligation imposed under any law, regulation, or permit.

99. Notification to EPA or ADEM pursuant to this Section of any anticipated delay shall not by itself excuse the delay.

## **XXII. FORM OF NOTICE**

100. Unless otherwise specified, or as may be changed from time to time, 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:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044-7611  
Reference DOJ Case No. 90-5-1-1-06985

United States Attorney  
Southern District of Alabama  
63 South Royal Street  
Mobile, AL 36602

As to EPA:

Assistant Administrator for Enforcement  
and Compliance Assurance  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
USEPA Headquarters

Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Washington, DC 20460

Chief  
Water Programs Enforcement Branch  
Water Management Division  
U.S. Environmental Protection Agency,  
Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

For oral notification: Doug Mundrick, Chief, Water Programs Enforcement Branch, 404-562-4300  
(subject to change on written notice to the Board)

As to the State of Alabama:

Craig Kneisel  
Chief, Environment Division  
Office of the Alabama Attorney General  
11 South Union Street  
Montgomery, AL 36130-0152

As to ADEM:

Olivia Jenkins  
General Counsel  
Alabama Department of Environmental Management  
1400 Coliseum Blvd.  
Montgomery, AL 36110-2059

As to MBW:

Executive Director  
Mobile Bay Watch, Inc.  
3280 Dauphin Street, Suite C-124  
Mobile, AL 36606

As to the Board:

Executive Director  
Board of the Water and Sewer Commissioners of the City of Mobile  
207 North Catherine Street  
Mobile, AL 36604-1504

101. Notifications to or communications with the parties to this Consent Decree shall be deemed submitted on the date they are postmarked.

### **XXIII. MODIFICATION**

102. This Consent Decree, including Appendices, contains the entire agreement of the parties and shall not be modified by any prior oral or written agreement, representation or understanding. Prior drafts of this Consent Decree shall not be used in any action involving the interpretation or enforcement of this Consent Decree. This Consent Decree may not be materially amended or modified except by written agreement of the United States, the State and the Board, and approval of this Court. MBW shall have the right to submit a statement of position regarding any material modification filed with the Court pursuant to this Paragraph. Any material modification of this Consent Decree shall be effective upon approval of the Court. Except as provided in the following sentence, non-material modifications of the Consent Decree which do not significantly alter the requirements of this Consent Decree may be made in writing by the United States and the Board and shall be effective upon filing with the Court. Non-material modifications of the Consent Decree which affect only the Board's obligations to the State or MBW may be made by written agreement of the State and the Board or MBW and the Board, as applicable. Such modifications shall be effective upon filing with the Court.

### **XXIV. PUBLIC COMMENT**

103. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree are subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. The Board, the State and MBW each consent to the entry of this Consent

Decree without further notice.

**XXV. CONTINUING JURISDICTION OF THE COURT**

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

**XXVI. FINAL COMPLIANCE AND TERMINATION**

105. The Board shall achieve final compliance with all terms of this Consent Decree no later than September 1, 2007. This Consent Decree shall terminate in its entirety upon the determination by the United States, after consultation with the State and MBW, that all of the following events have occurred:

- a. The Board has paid all outstanding civil and stipulated penalties it is obligated to pay under this Consent Decree;
- b. The Board has completed all Work required pursuant to this Consent Decree including the performance of the SEPs described in Appendix A; and
- c. The Board has provided certification, under penalty of perjury, of its payment of all outstanding penalties and its completion of performance.

106. The Board may request that the United States make a determination pursuant to Paragraph 105 that this Consent Decree may be terminated in whole or in part. Any such request shall be in writing and shall include a certification pursuant to Paragraph 97, under penalty of perjury, that the requirements of Paragraph 105 have been met. The Board shall serve a copy of any such request on all Parties.

107. If the United States agrees, after consultation with the Parties, that the Board has met the

requirements of Paragraph 105 above, the United States will notify the Parties and the Court in writing that the Consent Decree, or a portion thereof, has terminated. If the United States determines not to terminate the Consent Decree, or a portion thereof, the United States shall so notify the Parties in writing. The United States' notice shall summarize the basis for its decision and describe the actions necessary to achieve final compliance. The decision to terminate the Consent Decree, or a portion thereof, pursuant to this Section shall be in the sole, unreviewable discretion of the United States.

#### **XXVII. FINAL JUDGMENT**

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

#### **XXVIII. SIGNATORIES**

109. The Acting Assistant Attorney General, on behalf of the United States, and the signatories for the State, MBW and the Board, certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such parties to this document.

110. The Board, the State and MBW agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified them in writing that it no longer supports entry of this Consent Decree.

111. The Board shall identify on the attached signature page the name, address, and telephone number of an agent who is authorized to accept service of process by mail on the Board's behalf with respect to all matters arising under or related to this Consent Decree. The Board agrees to accept service

of process in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons.

**XXIX. DISMISSAL OF STATE SUIT**

112. Within ten (10) days of approval and entry of this Consent Decree by the Court, the State shall file a notice of dismissal with prejudice in State of Alabama v. Board of Water and Sewer Commissioners of the City of Mobile, CV-99-2193 (Cir. Ct. Mobile County).

**XXX. ADDITIONAL CONSIDERATION**

113. In addition to the relief set forth herein, MBW and the Board agree to resolve any claim that MBW may have for certain Unpermitted Discharges occurring on or after the Date of Entry pursuant to the terms set forth in Appendix B.

Dated and entered this \_\_\_\_ day of \_\_\_\_\_ 2002.

---

UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree in United States, et al.  
v. The Board of Water and Sewer Commissioners of the City of Mobile, Alabama, Civil Action No.  
\_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA

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

\_\_\_\_\_  
THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

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

\_\_\_\_\_  
CYNTHIA HUBER  
Senior Attorney  
PATRICIA L. HURST  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044  
(202) 514-5273  
(202) 307-1242

WE HEREBY CONSENT to the entry of this Consent Decree in United States, et al. v. The Board of Water and Sewer Commissioners of the City of Mobile, Alabama, Civil Action No. \_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA

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

\_\_\_\_\_  
ERIC V. SCHAEFFER  
Director  
Office of Regulatory Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

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

\_\_\_\_\_  
J. I. PALMER, JR.  
Regional Administrator  
United States Environmental  
Protection Agency - Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

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

\_\_\_\_\_  
MELISSA ALLEN HEATH  
Associate Regional Counsel  
United States Environmental  
Protection Agency - Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562- 9520

WE HEREBY CONSENT to the entry of this Consent Decree in United States, et al. v. The Board of Water and Sewer Commissioners of the City of Mobile, Alabama, Civil Action No. \_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE PLAINTIFF THE UNITED STATES OF AMERICA

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

\_\_\_\_\_  
DAVID P. YORK  
United States Attorney  
Southern District of Alabama  
63 South Royal Street  
Mobile, AL 36602  
(251) 441-5845

WE HEREBY CONSENT to the entry of this Consent Decree in United States, et al. v. The Board of Water and Sewer Commissioners of the City of Mobile, Alabama, Civil Action No. \_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE STATE OF ALABAMA

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

\_\_\_\_\_  
CRAIG KNEISEL  
Chief, Environment Division  
Office of the Alabama Attorney General  
11 South Union Street  
Montgomery, AL 36130-0152  
(334) 242-4878

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

\_\_\_\_\_  
ROBERT D. TAMBLING  
Assistant Attorney General  
Office of the Alabama Attorney General  
11 South Union Street  
Montgomery, AL 36130-0152  
(334) 242-7445

WE HEREBY CONSENT to the entry of this Consent Decree in United States, et al. v. The Board of Water and Sewer Commissioners of the City of Mobile, Alabama, Civil Action No. \_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF MOBILE BAY WATCH, INC.

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

\_\_\_\_\_  
CASI L. CALLAWAY  
Executive Director on behalf of  
Mobile Bay Watch, Inc.  
3280 Dauphin Street, Suite C-124  
Mobile, AL 36606  
(251) 476-0328

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

\_\_\_\_\_  
JACK V. GREER  
Chairman of the Board  
Mobile Bay Watch, Inc.  
3280 Dauphin Street, Suite C-124  
Mobile, AL 36606  
(251) 476-0328

WE HEREBY CONSENT to the entry of this Consent Decree in United States, et al. v. The Board of Water and Sewer Commissioners of the City of Mobile, Alabama, Civil Action No. \_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR DEFENDANT THE BOARD OF WATER AND SEWER COMMISSIONERS OF THE CITY OF MOBILE, ALABAMA

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

\_\_\_\_\_  
D. MARK NIX  
Chairman of the Board

ATTEST: \_\_\_\_\_

CLYDE D. MAYE JR.  
Secretary - Treasurer  
The Board of the Water and Sewer Commissioners of  
the City of Mobile  
207 North Catherine Street  
Mobile, AL 36604-1504  
(251) 694-3150

Agent authorized to accept service of process on behalf of Defendant:

Malcolm Steeves  
Executive Director  
The Board of the Water and Sewer Commissioners of  
the City of Mobile  
207 North Catherine Street  
Mobile, AL 36604-1504  
(251) 694-3150

## APPENDIX A

### **IISEP 1: Installation of New Private Residential Service Laterals in Low Income Areas within the Board's Service Area.**

#### A.OVERVIEW OF MAWSS

The Mobile Area Water and Sewer System ("MAWSS") operates as a non-profit public water and sewer utility district, governed by the Board of Water and Sewer Commissioners of the City of Mobile, Alabama ("Board"). The five commissioners who serve on the Board are appointed by the Mobile City Council for six year terms. The service area, nearly 250 square miles, of MAWSS includes the incorporated areas of Mobile in addition to unincorporated areas of Mobile County. Approximately 300,000 people live within the service area; 87,000 customer accounts are maintained.

MAWSS operates three wastewater treatment plants ("WWTPs"): (1) Williams WWTP; (2) Smith WWTP; and (3) Ziebach WWTP. The Williams WWTP is a pure oxygen activated sludge plant and is the largest of the WWTPs. It is permitted to treat 28 MGD, but has a capacity to treat approximately 40 MGD. Three primary lift stations, Halls Mill, Eslava Creek, and Virginia Street (the first two of which are joined by a common force main) are the only influent sources to the Williams WWTP. A 10 million gallon Severe Weather Attenuation Tank ("SWAT") was constructed at the Williams WWTP to receive peak flows during severe wet weather events. The Williams WWTP receives flow from the Halls Mill, Eslava Creek, Virginia Street, and Theodore Sewer Basins. There are approximately 766 total miles of sewer pipe in these basins.

The Smith WWTP is a trickling filter plant with a permitted capacity of 12.8 MGD and can treat flows to 26 MGD. The Smith WWTP receives its flow from the Three Mile Creek and Eight Mile Creek Sewer Basins, which contain a total of 385 miles of pipe. There is an 8 million gallon SWAT on the Three Mile Creek trunk main to store peak flows during severe wet weather events.

The Ziebach WWTP is a trickling filter plant with a permitted capacity of 2 MGD. The Ziebach Sewer Basin, containing 50 miles of pipe, is served by the Ziebach WWTP.

The MAWSS sanitary sewer collection system contains nearly 180 lift stations.

Mobile is the wettest city of its size in the United States, averaging 67 inches of rainfall annually. Storm water and ground water inflow and infiltration ("I/I") flood the collection system during intense and/or extended heavy rain events, causing sanitary sewer overflows ("SSOs") to occur. I/I enters the system through defects in the public sanitary sewer system and the in private laterals that feed the public system. By reducing I/I, one reduces SSOs, public health risks associated with SSOs, and the cost of transporting and treating extraneous flows. Rehabilitation of the collection system not only reduces I/I, but increases the life of the infrastructure.

## XXX.PURPOSE OF SUPPLEMENTAL ENVIRONMENTAL PROJECT 1

The purpose of this Supplemental Environmental Project (“SEP 1”) is to reduce extraneous flows entering the sanitary sewer system through defective private sanitary sewer laterals (“PSSL”). PSSLs carry wastewater from the customer’s building to the public sanitary sewer system. The public sanitary sewer system becomes a conduit for storm water when defective pipe allows rain or ground water to enter the system by means of I/I. Wet weather SSOs occur when the flow of combined storm water and sanitary sewage exceeds the capacity of the sanitary sewer system to contain and transport the flow to the WWTP.

This SEP will dedicate \$2 million to the replacement of PSSLs in areas inhabited by low and moderate income homeowners and identified as priority areas for rehabilitation. The goals of SEP 1 are as follows:

- Replace private sanitary sewer laterals.
- Reduce infiltration and inflow to the sanitary sewer system
- Decrease surcharging in the sanitary sewer systems
- Reduce sanitary sewer overflows

This program will not only benefit the public at large, but it will also benefit the property owner receiving the new lateral. Deteriorated laterals are usually problematic for the property owner because of roots growing into the pipe and blocking flow. The problem of root intrusion will be eliminated where new pipe is installed.

The SEP program will identify the areas in which the program will be performed. The program will be limited to replacing the laterals at locations where the private property owner will sign a Right-Of-Entry approving the work.

## C.SCOPE OF WORK

### 1.Definition of Private Sanitary Sewer Lateral

For the purposes of this SEP, a PSSL shall be the sanitary waste pipe that extends from a point two to five feet outside a building’s foundation to the joint at which said pipe connects to the public sanitary sewer lateral. The aforementioned connection may be at the property line or between the property line and the edge of street. The objective of this project is to bring aged PSSLs in compliance with the current plumbing code by replacing the existing pipe that was installed by the plumber at the time the building was constructed. The pipe replacement is terminated two to five feet from the building because excavating close to the building may create foundation problems. Addressing pipe under the building is not within the scope of this SEP.

### 2.MAWSS Project Manager

The MAWSS Collection System Engineer will be the project manager for SEP 1. He will be responsible for coordinating the project's completion through consulting engineers.

### 3.Consultants and Contractors

The Board intends to use two local consulting engineering firms to administer this project, Thompson Engineering and Volkert & Associates. The project will proceed down two parallel paths. Both consulting engineers will be working in the same capacity, but overseeing PSSL replacements in different areas. Each consultant will obtain contractor bids for work to be performed in its respective project areas. Contractors will be chosen to work under each consulting engineer by means of low bid selection.

### 4.Selecting SEP Areas

The areas in which SEP 1 will be implemented will be selected by first identifying the mini-basins, i.e., sewer basins of 25,000 feet or less, that have been identified by means of I/I investigations as priority areas needing rehabilitation. These areas may include locations where public sewer rehabilitation has been completed, but PSSLs have not been addressed. Until mid-2002, 1990 census information, adjusted in 1996 by the Alabama Department of Economic and Community Affairs ("ADECA"), will be used to identify moderate, low, and very low income home owners eligible for this PSSL replacement program. This identification will be made by the South Alabama Regional Planning Commission ("SARPC"). Year 2000 census data will be used for this purpose as soon as that information is available to SARPC. Areas that are both a priority in I/I ranking and are of very low, low and moderate income population will be selected for the SEP, generally starting with the very low and low income homeowners located in areas that overlap the highest priority I/I ranking.

### 5.Public Notification of SEP Areas

Once the SEP areas have been identified, the Board and its consultants will send letters informing the property owners within the SEP areas that there will be a public meeting regarding the SEP. Each property owner will be asked to sign a Right-of-Entry ("ROE") at the public meeting. Door to door contacts will be made for those people who do not attend the meeting or sign a ROE.

## 6. Bidding the Project

After the project areas are identified, the consultants will be asked to prepare bid documents and to proceed with securing contractors to perform the work. There will be one or more prime contractors working under each consultant. Each contractor will be required to have a licensed master plumber overseeing the lateral replacement.

## 7. Roles of Board, Contractor, and Consultant

A summary of the roles each party is expected to play in the performance of this SEP is as follows:

### a. MAWSS

- Fund SEP
- Manage SEP consultants
- Contract with both consultants and contractors
- Obtain information to identify eligible homeowner locations
- Identify priority I/I areas for implementing SEP
- Flow monitor for before and after results of project
- Ensure SEP completion on time
- Work with consultants on communicating with public in affected areas
- Report as required by Consent Decree
- Provide legal services as necessary to support project

### 31. South Alabama Regional Planning Council

- Secure and coordinate homeowner income status from Census and Mobile County Tax Assessors office.
- Provide location data to MAWSS for very low, low, and moderate income homeowner locations

### c. Engineering Consultants

- Prepare and schedule presentations to affected public in SEP areas.
- Obtain as many ROEs as possible at the public meeting.
- Prepare bid documents
- Bid project and recommend contractors
- Schedule and oversee performance of contractors
- Provide a point of contact for customers who have questions or concerns about the project
- Furnish reviewed and approved contractor pay estimates to MAWSS for payment
- Furnish status reports to MAWSS including maps showing SEP areas

### d. Contractors

- Obtain ROEs from customers missed at public meeting
- Obtain plumbing and Right-of-Way permits

- Determine alignment of existing laterals
- Coordinate with property owners
- Replace PSSSL in accordance with current plumbing code requirements
- Restore property after PSSSL is installed including sidewalks and other paved areas
  - Video interior of new PSSSL
- Provide above ground video of before and after conditions
- Comply with all other project specifications and schedules

## 8. Project Costs

The Board shall spend at least \$2 million present value for the replacement of private sanitary sewer laterals in very low, low and moderate income areas. The \$2 million dollars is intended to cover the costs of the contractors and consultants performing the work accomplished on private property only. The cost of Board staff, equipment, and materials to support this SEP as enumerated above shall not be counted against the \$2 million.

The average cost (contractor plus consultant) of each PSSSL is expected to range from \$1,000 to \$2,000. Actual costs will depend on bid prices, length of PSSSL, surface and sub-surface interferences to PSSSL replacement, etc. While initial expectations anticipate replacement of 2000 PSSSLs, the actual number of PSSSLs replaced in this SEP may be higher or lower.

## D. PROGRAM SCHEDULE

The Board has initiated discussions with SARPC to identify areas for PSSSL replacement. The Board shall identify areas eligible for PSSSL replacement to the United States and the State with a copy to Bay Watch by January 31, 2002, which EPA shall approve after consultation with the State and Bay Watch. Consultants will be tasked with developing bid documents as soon as the SEP areas are identified. Public meetings will be held within thirty (30) days of EPA approval of the eligible areas.

The Board will take bids on Phase I of this project within ninety days of the Consent Decree Date of Entry. The first group of bid openings, Phase I, will result in expending over \$1 million dollars on PSSSL replacements. The second group, Phase II, of bid openings will occur no later than December 31, 2002, and will result in expending at least an additional \$1 million dollars on PSSSL replacements.

Each Phase is expected to take two years to complete with a one-year overlap of the two phases. Consequently, this SEP will require three years to complete. The completion of the work described in this SEP 1 will be completed by December 31, 2004.

## **II. SEP 2: Acquisition of Environmentally Valuable Habitat in Mobile County Through the Forever Wild Program.**

### A. FUNDING AND DISTRIBUTION OF THE ESCROW

In accordance with Section X of the Consent Decree, a SEP shall be performed that is comprised of the purchase for preservation of real property in Alabama and located within or relating to the Forever Wild Mobile Tensaw Delta Wetlands Conservation Project, Phase III (“Phase III”). A map of Phase III is attached hereto as Attachment 1. The Board shall implement this SEP by funding an interest-bearing escrow account to finance the acquisition of appropriate interests in real property (“SEP 2 Escrow”). On or before, January 31, 2002, the Board shall place into the SEP 2 Escrow the sum of \$300,000.

The principal amount deposited in the Escrow and all interest earned on such funds shall be used after the Date of Entry solely to acquire appropriate interests in real property in Phase III, in Mobile County, exclusively for the purposes of: protecting, restoring and enhancing wetland and riparian areas, including wildlife habitat, within or relating to Phase III, consistent with Section X of the Consent Decree and this Section II of Appendix A. Upon the written approval of the United States through the Department of Justice, the Board shall disburse Escrow monies in the approved amounts to the Alabama Forever Wild Land Trust by electronic transfer pursuant to written instructions provided by the State. The costs of such electronic funds transfer shall be the responsibility of the Board. The Board shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to the Parties as specified in Section XXII of the Consent Decree. The transmittal letter shall reference the case name, USAO File Number, and DJ No. 90-5-1-1-06985, and Alabama Forever Wild Land Trust Fund No. 0746. Other than for failure to timely fund the SEP 2 Escrow or to timely disburse funds from the SEP 2 Escrow, or to provide notice of the funding and disbursement of the SEP 2 Escrow, the Board shall not be liable for stipulated penalties in connection with Section II of this Appendix A. Upon distribution of all funds in the Escrow to the Alabama Forever Wild Land Trust and notice to the Parties of such disbursement, the Board’s performance obligations with regard to SEP 2 shall be deemed to be completed.

## B. PURCHASE OF QUALIFYING PROPERTY INTERESTS

The State shall cause the Alabama Forever Wild Land Trust to use all sums dispersed by the Board pursuant to Paragraph II.A. of this Appendix A solely for the purposes of carrying out this SEP 2. The State shall use best efforts to obtain matching funds for purchases in the Forever Wild Mobile Tensaw Delta Wetlands Conservation Project, Phase III, in Mobile County. Any matching funds obtained by the State shall only be used to acquire property interests in the Forever Wild Mobile Tensaw Delta Wetlands Conservation Project, Phase III, in Mobile County. It is the expectation that: (1) within twelve (12) months of the Date of Entry, title to appropriate property interests in various parcels of eligible real property will be acquired by and conveyed to the State by the Alabama Forever Wild Land Trust, and (2) conservation easements will be placed on such land. All purchases made pursuant to this Paragraph shall be made in accordance with Amendment 543 *Constitution of Alabama*, 1901 and any rules and regulations promulgated thereunder. If: (1) the United States and the State determine that acquisition of interests in eligible property cannot be accomplished for a financially reasonable purchase price; (2) the United States and the State otherwise agree that such property should not be purchased; or (3) if any funds remain in the SEP 2 Escrow after the purchase of interests in eligible property, then upon approval of the United States,

the State, through its Alabama Forever Wild Land Trust, shall purchase interests in other real property and/or conservation easements on real property located in the Forever Wild Mobile Tensaw Delta Wetlands Conservation Project, Phase III, outside of Mobile County until the full amount of the SEP 2 Escrow has been expended. The State shall provide written quarterly reports on the progress of implementing SEP 2 to the Parties at the addresses set forth in Section XXII of the Consent Decree. Such reports shall be submitted on or before the tenth day of January, April, July and October for the previous quarter. The State shall use good faith efforts to complete the requirements of this SEP within twelve (12) months of the Date of Entry.

C. MAINTENANCE OF PROPERTY INTERESTS

The State shall ensure that any property interests, including conservation easements, acquired pursuant to this SEP shall be maintained in perpetuity in a manner consistent with the objectives of the Consent Decree. The State will hold title to such property interests; the State may transfer such interests to another public or private non-profit entity, but only if such entity agrees in writing to maintain the interest in a manner consistent with the objectives of the Alabama Forever Wild Land Trust and the Consent Decree, if the deed(s) transferring such interests provide(s) for such conditions established on the use of the property, and only after written approval of the United States of the transfer and the content of such deed(s).

**III. SEP 3: Acquisition of Environmentally Valuable Habitat in Mobile County, with a preference for property within the Dog River watershed area.**

A. FUNDING AND DISTRIBUTION OF THE ESCROW

In accordance with Section X of the Consent Decree, a SEP shall be performed that is comprised of the purchase for preservation of real property in Alabama and located within or relating to the Dog River watershed in Mobile County. A map of the Dog River watershed is attached hereto as Attachment 2. The Board shall implement this SEP by funding an escrow account to finance the acquisition of appropriate interests in real property. On or before, January 31, 2002, the Board shall place into an interest bearing escrow account (“the SEP 3 Escrow”), the sum of \$150,000.

The principal amount deposited in the SEP 3 Escrow and all interest earned on such funds shall be used after the Date of Entry solely to acquire real property and conservation easements on real property in the Dog River watershed in Mobile County, exclusively for the purposes of: protecting, restoring and enhancing wetland and riparian areas, including wildlife habitat, within or relating to the Dog River watershed in Mobile County, consistent with Section X of the Consent Decree and this Section III of Appendix A. Upon the written approval of the United States through the Department of Justice, the Board shall disburse SEP 3 Escrow monies in the approved amounts to the Alabama Forest Resources Center at 9 Dauphin Street, Second Floor, Mobile, AL 36602.

Other than for failure to timely fund the SEP 3 Escrow or to timely disburse funds from the SEP 3 Escrow,

or to provide notice of the funding and disbursement of the SEP 3 Escrow, the Board shall not be liable for stipulated penalties in connection with Section III of this Appendix A. Upon distribution of all funds in the Escrow to the Alabama Forest Resources Center and notice to the Parties of such disbursement, the Board's performance obligations with regard to SEP 3 shall be deemed to be completed.

#### B. PURCHASE OF QUALIFYING PROPERTY INTERESTS

Bay Watch shall cause the Alabama Forest Resources Center to deposit all sums dispersed by the Board pursuant to Paragraph III.A of this Appendix A in an account established solely for carrying out the purposes of this SEP 3 ("SEP 3 Account"). All money in the SEP 3 Account shall be used solely for the carrying out the purposes of this SEP 3. Bay Watch shall use best efforts to obtain matching funds for purchases in the Dog River watershed area in Mobile County. Any matching funds obtained by Bay Watch shall only be used to acquire appropriate property interests in the Dog River watershed in Mobile County. It is the expectation that: (1) within twelve (12) months of the Date of Entry, appropriate property interests in eligible parcels of real property located in the Dog River watershed of Mobile County will be acquired by and conveyed to the Alabama Forest Resources Center; and (2) conservation easements will be placed on such land. Bay Watch shall obtain the written approval of the United States as to any parcel it seeks to purchase prior to completing any such purchase. If: (1) the United States and Bay Watch determine that acquisition of interests in eligible property cannot be accomplished for a financially reasonable purchase price; (2) the United States and Bay Watch otherwise agree that such property should not be purchased; or (3) after twelve (12) months from the Date of Entry, some or all of the funds remain in the SEP 3 Account; then Bay Watch shall cause the Alabama Forest Resources Center to transfer any remaining funds in the SEP 3 Account to the Alabama Forever Wild Land Trust, Fund No. 0746, at the Office of the Alabama Attorney General, 11 South Union Street, Montgomery, AL 36130-0152. Bay Watch shall provide written bi-monthly reports on the progress of implementing the SEP to the Parties at the addresses set forth in Section XXII of the Consent Decree. Such reports shall be submitted on or before the tenth day of every other calendar month beginning the month after the Date of Entry. Bay Watch shall complete the requirements of this SEP within twelve (12) months of the Date of Entry.

#### C. MAINTENANCE OF PROPERTY INTERESTS

Bay Watch shall ensure that any property interests, including conservation easements, acquired pursuant to this SEP shall be maintained in perpetuity in a manner consistent with the objectives of the Consent Decree. Bay Watch shall ensure that Alabama Forest Resources Center will hold title to such property interests; Alabama Forest Resources Center may transfer such interests to another public or private non-profit entity, but only if such entity agrees in writing to maintain the interest in a manner consistent with the objectives of the Consent Decree, if the deed(s) transferring such interests provide(s) for such conditions established on the use of the property, and only after written approval of the United States of the transfer and the content of such deed(s).

### **IV. SEP 4: Creation and Maintenance of a Publicly Available Database of Water Quality Monitoring in the Mobile Delta.**

#### A. PURPOSE OF SEP 4

In accordance with Section X of the Consent Decree, a SEP shall be performed that is comprised of the creation and maintenance of a publicly available database of water quality monitoring data collected within the Mobile Delta, to be known as the Mobile Bay Area Water Quality Database (“Database”). The total estimated cost of the project is \$200,000. The total cost of the project to be paid pursuant to SEP 4 is \$50,000. The purpose of SEP 4 is to establish and maintain a database of water quality monitoring in the Mobile Bay Watershed for use by the public. Members of the public will be able to log onto a web site and review water quality trends, request information about water quality at a given site on a given day and compare discharge reports to monitoring data. The Database will contain a map of all discharge points and monitoring sites and will allow users to identify gaps or overlaps in data.

#### B. DESCRIPTION OF THE PROJECT

The Database will contain all data reported on Discharge Monitoring Reports (“DMRs”) by every facility with an NPDES permit located in Mobile County that discharges into the Mobile Bay Watershed for the period beginning January 1, 1997. All DMRs submitted during this period will be put into the Database by scanning the records found at ADEM or from computerized data generated by regulated industry.

The Database will also contain data from entities that perform water quality monitoring in Mobile County, including local environmental organizations, universities, the Board of Health, Mobile Area Water & Sewer System, the Mobile Bay National Estuary Program (“NEP”), Dauphin Island Sea Lab, the Alabama Department of Environmental Management (“ADEM”), and regulated industry. Bay Watch shall use best efforts to work with local, state and national groups to ensure that no data is duplicated and that all existing data is used. Bay Watch shall seek assistance from ADEM to determine which testing methods conform to ADEM’s Quality Control Standards. All data shall be used in the Database, but only those data that meet ADEM’s Standards shall be listed as reliable in the Database. These data will be compiled, organized and put into the database.

Bay Watch will hire a computer consultant who will develop a database that accepts data, plots the information on a GIS map and then reports that information on the internet. Data input will be restricted through password access. Only the administrator of the Database will have authority to delete or alter information in the Database. Users will be able to access monitoring data by waterway or watershed, and to manipulate the data to assess water quality in particular waterways.

The Database is distinct from, and shall not be construed as a substitute for, the Board’s provision of effluent and water quality monitoring data through the Public Document Repository.

#### C. FUNDING AND DISTRIBUTION OF THE SEP 4 ESCROW

The Board shall implement this SEP by placing \$50,000 in an interest bearing escrow account (“the

SEP 4 Escrow”) on or before, January 31, 2002, to be used as partial funding for the creation and maintenance of the Database.

The funds deposited in the SEP 4 Escrow and all interest earned on such funds shall be used after the Date of Entry solely to create and maintain the database. Upon the written approval of the United States through the Department of Justice, the Board shall disburse SEP 4 Escrow monies to Mobile Bay Watch, Inc., at 3280 Dauphin Street, Suite C-124, Mobile, Alabama 36606. Other than for failure to timely fund the SEP 4 Escrow, to timely disburse funds from the SEP 4 Escrow, or to provide notice of the funding and disbursement of the SEP 4 Escrow, the Board shall not be liable for stipulated penalties in connection with Section IV of this Appendix A. Upon distribution of all funds in the Escrow to Bay Watch, and notice to the Parties of such disbursement, the Board’s performance obligations with regard to SEP 4 shall be deemed to be completed.

**D. USE OF DISPERSED MONIES BY BAY WATCH**

Bay Watch shall deposit all sums dispersed by the Board pursuant to Paragraph IV.C of this Appendix A in an account designated solely for use in implementing this SEP 4 (“SEP 4 Account”). Bay Watch shall use best efforts to obtain matching funds for establishing and maintaining the Database. Any matching funds obtained by Bay Watch shall only be used to establish and maintain the Database.

Bay Watch shall not spend the dispersed sums in the SEP 4 Account until it has obtained 85 percent of the funding needed to complete the Database, or \$170,000. It is the expectation that, within 90 days of the Date of Entry, Bay Watch will receive from the Coastal Impact Assistance Program (“CIAP”) the sum of \$150,000, representing partial funding of the Database. It is further anticipated that the payments by the Board pursuant to Paragraph IV.C. of this Appendix A, when combined with the anticipated funding from CIAP, will provide Bay Watch with full funding for SEP 4. If: (1) Bay Watch has not obtained at least 85 percent of the funding for the Database within twelve (12) months of the Date of Entry; or (2) the United States and Bay Watch otherwise agree that the Database should not be created, then Bay Watch shall pay all sums dispersed by the Board, plus interest, to the United States by electronic funds transfer, in accordance with written instructions to be provided by the United States. The costs of such electronic funds transfer shall be the responsibility of Bay Watch. Bay Watch shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to the Parties as specified in Section XXII of the Consent Decree. The transmittal letter shall reference the case name, USAO File Number, and DJ No. 90-5-1-1-06985.

**E. SCHEDULE FOR COMPLETION OF SEP 4**

Bay Watch shall construct and implement the Database according to the schedule below.

Activity	Deadline
Solicit at least 3 bids for Database development	14 Days After Date of Entry

Select Database developer	14 Days After 85% Funding
Solicit at least 3 bids for all hardware	1 Month After 85% Funding
Meet with ADEM to determine applicable Quality Control Stds.	1 Month After 85% Funding
Complete Database software development	3 Months After 85% Funding
Purchase all hardware	3 Months After 85% Funding
Obtain all DMRs through June 30, 2002	6 Months After 85% Funding
Obtain all data from other sources through June 30, 2002	6 Months After 85% Funding
Complete input of all data through June 30, 2002	12 Months After 85% Funding
Complete quality assurance/quality control review of data	15 Months After 85% Funding
Complete test run of all Database functions	15 Months After 85% Funding
Certify that Database is fully operational and available to public	18 Months After 85% Funding

Bay Watch shall provide written certification to the United States within eighteen (18) months of the date that it received 85% of the funding for the Database that the Database is fully operational and available to the public.

#### F. REPORTING OBLIGATIONS

Bay Watch shall provide written bi-monthly reports on the progress of implementing SEP 4 to the Parties at the addresses set forth in Section XXII of the Consent Decree. Such reports shall be submitted on or before the tenth day of every other calendar month beginning the month after the Date of Entry.

## **APPENDIX B**

1.     Release and Covenant Not to Sue. In consideration of the payments that will be made by the Board under the terms of this Appendix B, MBW, and its officers, directors, employees, successors, and assigns and members, agree to release any potential or actual claim against the Board, and covenants not to sue or to take other action against the Board under the CWA, the AWPCA, or any other law or regulation, for any Unpermitted Discharge from the collection and/or transmission systems of the Board that occurs on or after the Date of Entry through the termination of the Consent Decree. This covenant not to sue shall also apply to officers, directors, employees, successors and assigns of the Board, but only to the extent that the alleged liability of the officer, director, employee, successor or assign is based on its status and in its capacity as an officer, director, employee, successor or assign, and not to the extent that the alleged liability arose independently of its status or capacity as an officer, director, employee, successor or assign.
  
2.     Payments by the Board. Unless payment is not required pursuant to Paragraph 5 of this Appendix B, for each Unpermitted Discharge from the collection and/or transmission systems of the Board reported pursuant to Paragraph 98(c) of the Consent Decree, the Board shall make a payment for each such Unpermitted Discharge that occurs after January 1, 2003, according to the following schedule:

<u>Reported Volume of Unpermitted Discharge</u>	<u>Payment by Board</u>
0 to 10,000 gallons	\$0
10,001 to 25,000 gallons	\$2,000
25,001 to 50,000 gallons	\$2,500
50,001 to 150,000 gallons	\$3,000
More than 150,000 gallons	\$6,000

The Board shall make payment within one Month of reporting such Unpermitted Discharge pursuant to Paragraph 98(c) to an account established solely for the purpose of receiving sums paid by the Board pursuant to this Appendix B (“Appendix B Account”). Payment pursuant to this Appendix B shall not relieve the Board of any other obligation under this Consent Decree.

3 Distribution of Sums in Appendix B Account. The Board shall distribute all sums in the Appendix B Account, including interest, on a semi-annual basis beginning July 1, 2003, in the following manner: Prior to receipt of certification pursuant to Paragraph 4 of this Appendix B, the Board shall distribute all sums in the Appendix B Account to a special account for funding of the installation of additional new private residential service laterals in low income areas within the Board’s service area consistent with Supplemental Environmental Project 1 described in Appendix A (“Additional Service Lateral Account”). Upon receipt of the certification described in Paragraph 4, the Board shall split the sums in the Appendix B Account, distributing 50 percent of all sums to the Mobile Baykeeper Program and the remaining 50 percent to the Additional Service Lateral Account. All sums distributed pursuant to this Paragraph to the Additional Service Lateral Account shall be in addition to, and shall not diminish, the Board’s obligation to dedicate certain sums to SEP 1 as specified in Appendix A.

4. Certification by Mobile Baykeeper Program. Prior to receiving any sums from the Board under this Appendix B, Mobile Baykeeper Program shall provide the Parties with certification that (1) it has independent status as a non-profit entity under Section 501(c)(3) of the Internal Revenue Code; (2) it is in good standing with the State of incorporation; (3) all sums received from the Board shall be used for one or more of the following activities, the purpose of which activities are to preserve, protect, and restore Mobile Bay: biological and chemical monitoring of surface water and groundwater; stream restoration; working with local communities on short- and long-term use plans; compliance educational outreach programs; compliance education for facilities that operate in the Mobile Bay watershed; acquisition of green space; and establishment of buffers; (4) no sums received from the Board shall be used for litigation expenses, lobbying, or any administrative or programmatic function of Mobile Bay Watch, Inc.; (5) all sums received from the Board shall be maintained in an account separate from other sources of funding; and (6) administrative expenses in support of the performance of the activities identified in this Paragraph shall not exceed fifteen (15) percent of the total sums distributed to Mobile Baykeeper Program. Mobile Baykeeper Program shall renew its certification on an annual basis and shall provide a report on May 1 of each year to the Parties and the Court which describes how such sums were spent during the preceding year. The Board shall not be required to distribute any sums to Mobile Baykeeper Program under this Appendix B unless the Mobile Baykeeper Program has complied fully with the requirements of this Paragraph.

5. The Board shall be entitled to make a claim of Force Majeure under Section XIII of this Decree for any Unpermitted Discharge or violation of this Appendix B and may invoke the dispute resolution provisions of Section XIV of this Consent Decree with respect to each such Unpermitted

Discharge or violation. Nothing in this Paragraph shall be construed to relieve the Board from any other obligation under this Consent Decree.

6. The obligations set forth in this Appendix B shall continue for so long as the Consent Decree remains effective. Upon termination pursuant to Section XXVI of the Consent Decree, the obligations set forth in this Appendix B shall also terminate.