

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA,

and

STATE OF WEST VIRGINIA, by and through  
the WEST VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,

Plaintiffs,

v.

BERKELEY COUNTY PUBLIC SERVICE  
SEWER DISTRICT

Defendant,

and

BERKELEY COUNTY PUBLIC SERVICE  
STORM WATER DISTRICT,

Fed. R. Civ. P. 20(a)(2)(A) Defendant.

Civil Action No.

**CONSENT DECREE**

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## **I. INTRODUCTION**

A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action against Defendant, Berkeley County Public Service Sewer District (“Sewer District”), and Berkeley County Public Service Storm Water District (“Storm Water District”) as a Fed. R. Civ. P. 20(a)(2)(A) Defendant. The Complaint alleges that the Sewer District has: (1) discharged and continues to discharge pollutants into waters of the United States during sanitary sewer overflow events in violation of conditions established in the National Pollutant Discharge Elimination System (“NPDES”) permits issued to the Sewer District under Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b); (2) violated effluent limits, operation and maintenance requirements, and other conditions and limitations established in NPDES permits issued to the Sewer District under Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b); and (3) violated the requirements of NPDES Permit No. WV0116025 by failing to develop and implement an adequate Municipal Separate Storm Sewer System (“MS4”) program. The Complaint names the Storm Water District as a Fed. R. Civ. P. 20(a)(2)(A) defendant because it has taken over jurisdiction of the Berkeley County MS4 and will be responsible going forward for compliance with the applicable permit.

B. The State of West Virginia Department of Environmental Protection (“WVDEP”) is a co-plaintiff in the United States’ action against the Sewer District. In the Complaint, WVDEP alleges that the Sewer District has: (1) discharged and continues to discharge pollutants into waters of the State during sanitary sewer overflow events in violation of conditions established in the NPDES permits issued to the Sewer District under Sections 6 and 8 of the West Virginia Water Pollution Control Act, W. Va. Code §§ 22-11-6 and 22-11-8; (2) violated effluent limits, operation and maintenance requirements, and other conditions and limitations

established in NPDES permits issued to the Sewer District under Sections 6 and 8 of the West Virginia Water Pollution Control Act, W. Va. Code §§ 22-11-6 and 22-11-8; and (3) violated the requirements of NPDES Permit No. WV0116025 by failing to develop and implement an adequate MS4 program.

C. The Sewer District is a public corporation and political subdivision of the State of West Virginia created pursuant to, and governed by, Chapter 16, article 13a, of the West Virginia Code.

D. The Sewer District owns and operates four major wastewater treatment plants (“WWTPs”), identified as Opequon/Hedgesville Plant, Inwood Plant, Baker Heights Plant, and North End WWTP, permitted pursuant to NPDES Permit No. WV0082759.

E. The Sewer District operates a pretreatment plant identified in NPDES Permit No. WV0082759 as the Industrial Wastewater Treatment Plant (Internal Outlet 103). Subject to certain conditions, NPDES Permit No. WV0082759 authorizes the Sewer District to accept wastewater from Ecolab, Inc., an Industrial User under NPDES Permit No. WV0082759, for pretreatment at the Industrial Wastewater Treatment Plant, before conveying the pretreated wastewater for ultimate treatment and discharge at the Baker Heights Plant. The Industrial Wastewater Treatment Plant (Internal Outlet 103) is also known as the Ecolab Pretreatment Facility.

F. The Sewer District owns and operates a lagoon WWTP identified as Woods II Subdivision, permitted pursuant to NPDES Permit No. WV0103161.

G. The Sewer District owns and operates numerous WWTPs with a flow of less than 50,000 gallons per day, known as “Package Plants,” permitted under General NPDES Water Pollution Control Permit No. WV0103110. The Package Plants include: The Corners at Arden

WWTP (NPDES Permit No. WVG550966); Forever Green Marketplace (NPDES Permit No. WVG550733); Gerrardstown (Mtn. Ridge) Intermediate School (NPDES Permit No. WVG551369); Hickory Run Subdivision (NPDES Permit No. WVG551311); Highpointe Subdivision (NPDES Permit No. WVG550964); Honeywood WWTP (NPDES Permit No. WVG551294); Marlowe Garden Apts.-Phase I (NPDES Permit No. WVG550914); Northbrook WWTP (NPDES Permit No. WVG551199); and Tomahawk School (NPDES Permit No. WVG551078).

H. The Sewer District previously owned and operated the Austin Mobile Home Park package plant (NPDES Permit No. WVG550858) under General NPDES Water Pollution Control Permit No. WV0103110. In December 2019, the Sewer District decommissioned the Austin Mobile Home Park package plant and diverted the flow to another wastewater treatment plant. WVDEP revoked WV/NPDES General Water Pollution Control Permit Registration No. WVG550858 on July 10, 2020.

I. The Sewer District previously owned and operated the Forest Heights I, II, and III wastewater treatment plants permitted pursuant to NPDES Permit No. WV0105830. In March 2021, the Sewer District decommissioned the Forest Heights I, II, and III plants and diverted the flow to another wastewater treatment plant.

J. The Sewer District operates and maintains multiple individual collection systems containing a total of approximately 245 miles of collection system, including but not limited to, Pump Stations, Force Mains, and Gravity Sewer Mains, collectively identified herein as the “Sewage Collection Systems.”

K. On June 22, 2009, WVDEP issued General NPDES Permit No. WV0116025 to the Berkeley County Council, under the individual registration number WVR030019. On March

1, 2011, WVDEP approved the transfer of NPDES Permit No. WV0116025, individual registration WVR030019, to the Sewer District for operation of the Berkeley County MS4. The permit was reissued on July 11, 2014.

L. On July 26, 2018, the Berkeley County Council created the Storm Water District. At that time, the Berkeley County Council gave the Storm Water District jurisdiction over all stormwater activities within the boundaries of Berkeley County, West Virginia, with the exception of those occurring within the city limits of Martinsburg, West Virginia, those under the authority of the Berkeley County Board of Education, and those under the authority of the West Virginia Division of Highways.

M. On October 6, 2019, the Berkeley County Council voted to impose a \$3.50 stormwater fee on residents of Berkeley County, except for the City of Martinsburg, WV. The stormwater fee provides funds for the Storm Water District's implementation of the MS4 program.

N. On September 16, 2020, the Storm Water District submitted an application for individual coverage under WVDEP's Small Municipal Separate Storm Sewer System Permitting Program.

O. For purposes of this Consent Decree, the Storm Water District is the successor to the liabilities of the Sewer District under the Clean Water Act and is responsible for the injunctive relief included herein for the Sewer District's violations of the requirements of NPDES Permit No. WV0116025 to develop and implement an adequate MS4 program.

P. 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 and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section II (Jurisdiction and Venue), and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

## **II. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b) and 1395(a), and Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), because it is the judicial district where the Defendants are located and where the violations occurred. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants and consent to venue in this judicial district.

2. This Court has supplemental jurisdiction over the WVDEP claims alleged herein pursuant to 28 U.S.C. § 1367(a) because the WVDEP claims are so related to the federal claims as to form part of the same case or controversy.

3. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319.

## **III. APPLICABILITY**

4. The obligations of this Consent Decree apply to and are binding upon the United States and the State, and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.



5. No transfer of ownership or operation of any portion of the Facilities, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to any such transfer, the applicable Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written transfer agreement, to EPA and the United States Department of Justice, in accordance with Section XVI (Notices). Any attempt to transfer ownership or operation of a Facility without complying with this Paragraph constitutes a violation of this Decree.

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

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

#### **IV. OBJECTIVES**

8. The objective of the Parties entering into this Consent Decree is to ensure that the Sewer District and the Storm Water District undertake comprehensive programs to achieve and maintain compliance with the terms and conditions of Defendants' NPDES permits, as identified herein; the Clean Water Act, including, but not limited to, 33 U.S.C. §§ 1311 and 1342; and the

West Virginia Water Pollution Control Act, West Virginia Code § 22-11-1 *et seq.*

## **V. DEFINITIONS**

9. Terms used in this Consent Decree that are defined in the Clean Water Act or in regulations promulgated pursuant to the Act have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

a. “Asset Management Software System” means the software system acquired and to be implemented by the Sewer District to record and track each asset through its life cycle, in accordance with the requirements of Subsection VIII.G (Asset Management Software System).

b. “Berkeley MS4” means the entire MS4 permitted under the MS4 Permit.

c. “Berkeley MS4 Program” means the program implemented by the Storm Water District to comply with the MS4 Permit, in accordance with the requirements of Subsection VIII.H (Berkeley MS4 Program) and the MS4 Manual.

d. “Building/Private Property Backup” means an SSO in the form of wastewater release or backup into a building or onto private property that is caused by blockages, flow conditions, or other malfunctions in the Sewage Collection Systems. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a privately owned sewer or building lateral is not a Building/Private Property Backup for the purposes of this Decree.

e. “Capital Improvement Plan” means the January 2017 Capital Improvement Plan developed for the Berkeley County Public Service Sewer District by The Thrasher Group.

- f. “CCTV” means closed circuit television.
- g. “Complaint” means the complaint filed by the United States and the State in this action.
- h. “Comprehensive Performance Evaluation” or “CPE” means an evaluation of the performance of the Ecolab Pretreatment Facility, the Woods II Lagoon Plant, or a Package Plant conducted in accordance with Paragraph 35.
- i. “Consent Decree” or “Decree” means this Decree and all appendices attached hereto (listed in Section XXVI (Appendices)).
- j. “Corrective Action Plan” or “CAP” means a plan for operational measures, remedial measures, and/or upgrades for the Ecolab Pretreatment Facility, the Woods II Lagoon Plant, or a Package Plant based on the applicable CPE results and conducted in accordance with Paragraph 36.
- k. “Corrective Maintenance” means work performed to identify, isolate, and correct a fault or breakdown so that failed equipment, machines, or assets can be restored to proper operation.
- l. “Day” means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day.
- m. “Defendants” means the Berkeley County Public Service Sewer District and the Berkeley County Public Service Storm Water District.
- n. “Deliverable” means a written document required to be submitted by either Defendant under this Consent Decree.

o. “DOJ” means the United States Department of Justice and any of its successor departments or agencies;

p. “Ecolab Pretreatment Facility” means the pretreatment facility identified in NPDES Permit No. WV0082759 as the Industrial Wastewater Treatment Plant (Internal Outlet 103), which accepts wastewater from Ecolab, Inc., an Industrial User under NPDES Permit No. WV0082759, before conveying pretreated wastewater to the Baker Heights Plant for ultimate treatment and discharge.

q. “Effective Date” means the definition provided in Section XVII (Effective Date).

r. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies.

s. “Facilities” means the Defendants’ permitted facilities, including the Berkeley MS4, Major WWTPs, Package Plants, Ecolab Pretreatment Facility, Woods II Lagoon Plant, and the Sewage Collection Systems, located in Berkeley County, West Virginia.

t. “FOG” means fats, oils, and grease.

u. “FOG Public Education Program” means the program developed by the Sewer District in accordance with Subsection VIII.F (FOG Education Program) to educate the public to help reduce the amount of FOG entering the Sewage Collection Systems from private residences and businesses.

v. “Force Main” means any pipe that receives and conveys wastewater under pressure from the discharge side of a pump.

w. “GIS Sewage Collection Systems Map” means the GIS map of the Sewage Collection Systems developed by the Sewer District pursuant to the requirements of Paragraph

43, and integrated into the Asset Software Management System pursuant to the requirements of Paragraph 60.

x. “Gravity Sewer Main” means any sanitary sewer pipe that receives, contains, and conveys wastewater that is not normally under pressure, but is intended to flow unassisted under the influence of gravity. The Gravity Sewer Mains consist of Small Diameter Gravity Sewer Mains and Large Diameter Gravity Sewer Mains.

y. “Infiltration” means water other than wastewater that enters a sewer system from the ground through such means as defective pipes, pipe joints, connections, or manholes, as defined by 40 C.F.R. § 35.2005(b)(20).

z. “Inflow” means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, stormwater, surface runoff, street wash waters, or drainage, as defined by 40 C.F.R. § 35.2005(b)(21).

aa. “Large Diameter Gravity Sewer Main” means any sanitary sewer pipe greater than 24 inches in diameter.

bb. “Major WWTPs” means the four major wastewater treatment plants, identified as Opequon/Hedgesville Plant (Outlet 001), Inwood Plant (Outlet 002), Baker Heights Plant (Outlet 003), and North End WWTP (Outlet 004), owned and operated by the Sewer District and permitted pursuant to NPDES Permit No. WV0082759.

cc. “Minimum Control Measure” or “MCM” means any minimum control measure required under the MS4 Permit.

dd. “Municipal Separate Storm Sewer System” or “MS4” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a city or other legal entity such as the Storm Water District that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and, (iv) which is not part of a Publicly Owned Treatment Works (“POTW”) as defined at 40 C.F.R. § 122.2.

ee. “MS4 Manual” means the manual detailing general programmatic requirements and including plans for implementing each MCM in the MS4 Permit and Stormwater Management Plan, developed by the Storm Water District in accordance with the requirements of Paragraph 68 and Appendix D, and approved by EPA.

ff. “MS4 Permit” means any West Virginia NPDES Water Pollution Control Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems issued to the Storm Water District by WVDEP.

gg. “Package Plant(s)” means the following WWTPs, permitted under General NPDES Water Pollution Control Permit No. WV0103110:

The Corners at Arden WWTP (NPDES Permit No. WVG550966)  
Forever Green Marketplace (NPDES Permit No. WVG550733)  
Gerrardstown (Mtn. Ridge) Intermediate School (NPDES Permit No. WVG551369)  
Hickory Run Subdivision (NPDES Permit No. WVG551311)  
Highpointe Subdivision (NPDES Permit No. WVG550964)  
Honeywood WWTP (NPDES Permit No. WVG551294)  
Marlowe Garden Apts.-Phase I (NPDES Permit No. WVG550914)  
Northbrook WWTP (NPDES Permit No. WVG551199); and  
Tomahawk School (NPDES Permit No. WVG551078)

hh. “Paragraph” means a portion of this Decree identified by an Arabic numeral.

ii. “Parties” means the United States, the State, the Berkeley County Public Service Sewer District, and the Berkeley County Public Service Storm Water District.

jj. “Preventative Maintenance” means work performed to prevent breakdown, reduce wear, improve efficiency, and extend the life of equipment, machines, and assets.

kk. “PSI Form” means the Pump Station inspection form developed and used pursuant to the requirements of Paragraph 53.

ll. “Pump Station Inspection Program” means the program for inspecting Pump Stations to ensure that inspection and Preventative Maintenance are performed at a frequency sufficient to ensure the Pump Stations operate as designed to prevent malfunctions and outages, developed and implemented pursuant to the requirements of Paragraph 53.

mm. “Sanitary Sewer Overflow” or “SSO” means an overflow, spill, diversion, or release of wastewater from or caused by the Sewage Collection Systems, that occurs at a location other than an NPDES permitted outfall. This term shall include: (i) discharges to waters of the State of West Virginia or United States from the Sewage Collection Systems and (ii) any release of wastewater from any Sewage Collection Systems to public or private property that does not reach waters of the United States or the State of West Virginia, including Building/Private Property Backups.

nn. “Section” means a portion of this Decree identified by a Roman numeral.

oo. “Sewage Collection Systems” means all conveyance facilities owned or operated by the Sewer District that are used to transfer wastewater including but not limited to Pump Stations, Force Mains, and Gravity Sewer Mains.

pp. “Sewage Collection Systems Capacity Assessment” means the assessment

conducted pursuant to the requirements of Paragraph 51 to identify capacity constraints within the Sewage Collection Systems that have caused or significantly contributed to SSOs in the past or are likely to cause or significantly contribute to the future occurrence of SSOs.

qq. “Sewage Collection Systems Capacity Remedial Measures Plan” means the plan developed pursuant to the requirements of Paragraph 52 to address capacity constraints identified by the Sewage Collection Systems Capacity Assessment.

rr. “Sewer District” means the Berkeley County Public Service Sewer District.

ss. “Sewer Segment” means the full length of a Gravity Sewer Main extending from one manhole to the next manhole in the Sewage Collection Systems.

tt. “Sewer Remedial Measures Plan” means a plan developed pursuant to the requirements of Paragraph 49 or Paragraph 50 to address the sewer deficiencies identified during the sewer inspections performed pursuant to Paragraphs 45-46.

uu. “Small Diameter Gravity Sewer Main” means any gravity sanitary sewer pipe less than or equal to 24 inches in diameter.

vv. “Standard Operating Procedures” or “SOPs” means standard operating procedures to assure proper operation of Major WWTPs, Package Plants, Woods II Lagoon Plant, and the Ecolab Pretreatment Facility, developed pursuant to the requirements of Subsection VIII.C.

ww. “State” means the State of West Virginia.

xx. “Storm Water District” means the Berkeley County Public Service Storm Water District.

yy. “United States” means the United States of America, acting on behalf of



EPA.

zz. “Wastewater Treatment Plant” or “WWTP” means each of the facilities owned or operated by the Sewer District that are designed to remove contaminants from wastewater.

aaa. “Woods II Lagoon Plant” means the lagoon WWTP identified as Woods II Subdivision, permitted pursuant to NPDES Permit No. WV0103161.

bbb. “WVDEP” means the West Virginia Department of Environmental Protection.

## **VI. CIVIL PENALTY**

10. The Sewer District has agreed to pay a civil penalty of \$864,000, to be split evenly between the United States and the State.

11. Within 30 Days after the Effective Date, the Sewer District shall pay the sum of \$432,000 as a civil penalty to the United States, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

12. The Sewer District shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer (“EFT”) to the DOJ account, in accordance with instructions provided to the Sewer District by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of West Virginia after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which the Sewer District shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

General Manager  
Berkeley County Public Service Sewer District  
65 District Way  
Martinsburg, WV 25402  
(304) 263-8566  
cbkeller@bcpssd.com

on behalf of the Sewer District. The Sewer District may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XVI (Notices).

13. At the time of payment, the Sewer District shall send notice of payment to: (i) EPA via email at CINWD\_AcctsReceivable@epa.gov; (ii) the U.S. EPA Regional Hearing Clerk at R3\_Hearing\_Clerk@epa.gov; and (iii) DOJ via email in accordance with Section XVI (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States and West Virginia Department of Environmental Protection v. Berkeley County Public Service Sewer District*, and shall include the Sewer District's name, street/P.O. Box address, email address, and telephone number; the name of the case; the civil action number of the case; the CDCS Number and DOJ case number 90-5-1-1-11893; the amount of the payment; and the method of the payment.

14. The Sewer District will satisfy its obligation to pay \$432,000 in civil penalty to the State through: (a) payment of \$86,400 to WVDEP, and (b) completion of the State Supplemental Environmental Project pursuant to Section VII, with an estimated value of \$1,145,000, which will mitigate the remaining \$345,600. No later than 30 Days after the Effective Date, the Sewer District shall pay a civil penalty of \$86,400 to the WVDEP for deposit into the State's Water Quality Management Fund, in accordance with instructions provided to the Sewer District by WVDEP. Payment shall include a reference to the civil action number of the case and shall be mailed to:

Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57th Street SE  
Charleston, WV 25304

15. At the time of payment, the Sewer District shall send notice that payment has been made to the State in accordance with Section XVI (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States and West Virginia Department of Environmental Protection v. Berkeley County Public Service Sewer District* and shall reference the civil action number.

16. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal or state or local income tax.

#### **VII. STATE SUPPLEMENTAL ENVIRONMENTAL PROJECT**

17. In settlement of a portion of WVDEP's claim for civil penalties under the West Virginia Water Pollution Control Act, W.VA. Code § 22-11-22, the Sewer District shall perform a State Supplemental Environmental Project ("State SEP") to: (a) divert the flow from the White Bush Landing package plant facility, WV/NPDES Permit No. WVG551160, and the Midway Mobile Home Park package plant facility, WV/NPDES Permit No. WVG550856, to the Sewer District's North End WWTP, and (b) decommission the White Bush Landing and Midway Mobile Home Park package plants, in accordance with the provisions of Appendix E (State SEP Work Plan).

18. The Sewer District is responsible for the satisfactory completion of the State SEP in accordance with the requirements of Appendix E. Satisfactory completion means the diversion of flow from the White Bush Landing and Midway Mobile Home Park plants to the Sewer District's North End WWTP and decommissioning of the White Bush Landing and Midway

Mobile Home Park package plants in accordance with West Virginia statutory and regulatory requirements and the schedule provided in Appendix E. The Sewer District may use contractors or consultants in planning and implementing the State SEP.

19. With regard to the State SEP, the Sewer District certifies the truth and accuracy of each of the following:

a. that all cost information provided to WVDEP in connection with WVDEP's approval of the SEP is complete and accurate and that the Sewer District in good faith estimates that the cost to implement the SEP is \$1,145,000;

b. that, as of the date of executing this Decree, the Sewer District is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that the Sewer District was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that the Sewer District has not received and will not receive credit for the SEP in any other enforcement action;

e. that the Sewer District will not receive any reimbursement for any portion of the SEP from any other person; and

f. that (i) the Sewer District is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 17; and (ii) the Sewer District has inquired of the SEP recipient and/or SEP implementer whether either is a party to an open federal financial assistance transaction that is

funding or could fund the same activity as the SEP and has been informed by the recipient and/or the implementer that neither is a party to such a transaction. For purposes of these certifications, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

20. State SEP Completion Report. No later than 90 Days after completion of the State SEP, the Sewer District shall submit a State SEP Completion Report to WVDEP in accordance with Section XVI (Notices). The State SEP Completion Report shall contain the following information:

- a. A detailed description of the State SEP as implemented;
- b. A description of any problems encountered in completing the State SEP and the solutions thereto;
- c. An itemized list of all eligible SEP costs expended;
- d. Certification that the SEP has been fully implemented pursuant to the provisions of the Consent Decree; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP.

21. After receiving the State SEP Completion Report, WVDEP shall notify the Sewer District whether or not the Sewer District has satisfactorily completed the State SEP in accordance with this Consent Decree. If the Sewer District has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section X.

22. 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 75.

23. Disputes concerning the satisfactory performance of the State SEP may be resolved using the procedures set forth in Section XII (Dispute Resolution), except that “EPA,” “DOJ,” and the “United States” shall be replaced with “the State.”

24. For federal income tax purposes, the Sewer District agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the State SEP.

## **VIII. COMPLIANCE REQUIREMENTS**

### **A. General Compliance Requirements**

25. Approval of Deliverables. At the time of submittal to EPA of any item requiring EPA approval under this Consent Decree, the Defendant shall also submit a copy of said item to WVDEP. After review of any plan, report, or other item that is required to be submitted for EPA approval pursuant to this Consent Decree, EPA, after consultation with WVDEP, shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

26. If the submission is approved pursuant to Paragraph 25(a), the Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 25(b) or (c), the Defendant shall, upon written direction from EPA, after consultation with WVDEP, take all actions required by the approved plan, report, or other item that EPA, after consultation with WVDEP, determines are technically severable from any disapproved portions, subject to the Defendant’s right to dispute only the specified conditions or the disapproved portions, under Section XII (Dispute Resolution).

27. If the submission is disapproved in whole or in part pursuant to Paragraph 25(c) or (d), the Defendant shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, the Defendant shall proceed in accordance with the preceding Paragraph.

28. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with WVDEP, may again require the Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, subject to the Defendant's right to invoke Dispute Resolution and the right of EPA and WVDEP to seek stipulated penalties as provided in the preceding Paragraphs.

29. Any stipulated penalties applicable to the original submission, as provided in Section X (Stipulated Penalties), shall accrue during the 45 Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable pursuant to Section X (Stipulated Penalties) notwithstanding any subsequent resubmission.

30. No later than 10 Days from the Effective Date, Defendant shall submit to EPA and the State for review a list of deadlines included in this Consent Decree. For any deliverable required by the Consent Decree, the list shall indicate whether EPA and State approval is required. The list shall be in substantially the same form as Appendix F, and shall be submitted in an electronic format (e.g., unlocked spreadsheet or similar format agreed to by the Parties).

Within 10 Days of modification of any deadline under this Consent Decree, Defendant shall provide an updated list reflecting changes to the future schedule. In the event of conflict between the list generated pursuant to this Paragraph and the Consent Decree, the Consent Decree shall control.

31. Permits. Where any compliance obligation under this Section requires a Defendant to obtain a federal, state, or local permit or approval, the Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The Defendant may seek relief under the provisions of Section XI (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

**B. Comprehensive Performance Evaluations (“CPEs”) and Corrective Action Plans (“CAPs”) for the Ecolab Pretreatment Facility, the Woods II Lagoon Plant, and the Package Plants**

32. No later than three months after the Effective Date, the Sewer District shall submit to EPA for approval a separate CPE and CAP for: (a) the Ecolab Pretreatment Facility, and (b) the Woods II Lagoon Plant.

33. No later than ten months after the Effective Date, the Sewer District shall submit to EPA for approval a separate CPE and CAP for the following Package Plants:

- a. The Corners at Arden WWTP (NPDES Permit No. WVG550966),
- b. Forever Green Marketplace (NPDES Permit No. WVG550733),
- c. Gerrardstown (Mtn. Ridge) Intermediate School (NPDES Permit No. WVG551369),



- d. Hickory Run Subdivision (NPDES Permit No. WVG551311), and
- e. Highpointe Subdivision (NPDES Permit No. WVG550964).

34. No later than 15 months after the Effective Date, the Sewer District shall submit to EPA for approval a separate CPE and CAP for the following Package Plants:

- a. Honeywood WWTP (NPDES Permit No. WVG551294),
- b. Marlowe Garden Apts.-Phase I (NPDES Permit No. WVG550914),
- c. Northbrook WWTP (NPDES Permit No. WVG551199), and
- d. Tomahawk School (NPDES Permit No. WVG551078).

35. Each CPE required by Paragraphs 32-34 shall include a structural evaluation of the individual unit processes, identification and prioritization of factors that may limit performance, and a comprehensive assessment of the ability to improve performance with the CAP components of Paragraph 36, including, at a minimum, an evaluation of the cause of, and an assessment of methods to address, any effluent limit violations occurring within the five years before the Effective Date. The evaluation shall include:

- a. for those plants for which the Sewer District has the original design specifications, an identification of whether the current plant configuration is consistent with the original design specification, and shall identify the reasons for any differences between current configuration and the original design;
- b. an evaluation of current solids management procedures and solids wasting frequency to determine whether modification could improve overall performance;
- c. a waste loading assessment of each plant;
- d. an assessment of the hydraulic capacity of each plant, to include an evaluation of the adequacy of influent pumping capacities, if applicable, current design capacity,

anticipated capacity needs for potential addition or removal of users, and anticipated capacity changes related to needed or planned plant upgrades and related to Sewage Collection System improvements (such as reduction of Inflow, Infiltration, or SSOs). As part of this assessment, include data on the average flow of each plant, as well as flows that occur in response to peak flow hours and wet weather events;

e. review of any existing facility site plan to determine whether such plan needs to be revised or created;

f. review of any existing operation and maintenance manuals and SOPs to determine whether such manuals and/or procedures need to be developed or revised to assure proper operation and maintenance and to meet the requirements of Paragraph 40 of this Consent Decree;

g. review of daily WWTP logs to identify whether logs need to be updated to be consistent with current plant configurations, process control activities, and daily operations; and

h. measurements of the daily aeration (oxygen demands) necessary at each plant to ensure NPDES permit compliance. For the daily aeration data, include measurements for how aeration at plants will be adjusted in response to seasonal changes.

36. Each CAP shall be based on the results of the CPE and include, at a minimum, the following remediation components:

a. specific operational measures, remedial measures, and/or upgrades to the Package Plant, Woods II Lagoon Plant, or Ecolab Pretreatment Facility to address all factors that limit or could limit operating efficiency and/or ability to achieve compliance with the applicable NPDES Permit; and

b. schedules for the implementation of such measures and/or upgrades; provided, however, that all measures and/or upgrades shall be completed within two years after EPA's approval of the CAP, unless a longer time period is agreed to in writing by all Parties.

37. In lieu of submission of a CPE and CAP for any particular Package Plant or the Woods II Lagoon Plant, the Sewer District may submit written notice to EPA that the Sewer District intends to undertake a project to eliminate the discharge from such Package Plant or Woods II Lagoon Plant by diverting the wastewater flow to a different WWTP. Simultaneously with the notice required by this Paragraph, the Sewer District shall submit to EPA for approval a schedule for elimination of the Package Plant or Woods II Lagoon Plant discharge, including the following:

- a. date of application to WVDEP for approval to divert wastewater flow to a different WWTP;
- b. commencement and completion of design;
- c. construction bidding process;
- d. commencement and completion of construction; and
- e. the proposed date of elimination of the original WWTP discharge.

C. **Standard Operating Procedures for Major WWTPs, Package Plants, Woods II Lagoon Plant, and the Ecolab Pretreatment Facility**

38. No later than 30 Days after the Effective Date, the Sewer District shall submit to EPA and WVDEP for review and comment SOPs designed to assure proper operation of each Major WWTP.

39. No later than 30 Days after submission of the applicable CPE, the Sewer District shall update as necessary the SOPs designed to assure proper operation of each Package Plant, the Woods II Lagoon Plant, and the Ecolab Pretreatment Facility, taking into account any

applicable CPE developed pursuant to Subsection VIII.B. The revised SOPs shall be made available to WVDEP and EPA upon request.

40. The SOPs required by Paragraphs 38 and 39 shall include the following:

a. Electronic Activity Sheets maintained through the Asset Management System. The Electronic Activity Sheets shall include a checklist for each process that identifies, at a minimum, whether the process is working as designed, requires maintenance, or is non-operational. The plant operator shall make entries in the Electronic Activity Sheets at least once per shift and shall note whether any Preventative Maintenance, Corrective Maintenance, or emergency work is performed and reference the specific work order number for the work performed; and

b. Standard operation and maintenance (“O&M”) procedures and protocols for each plant that are tailored to the specific operational requirements of each plant and that include the following:

- i. For each primary treatment, secondary treatment, and disinfection process or other equipment critical for optimal plant operation, include operational guidance for those processes and equipment, including a list of all operational parameters, set points, operational ranges, optimal ranges of equipment, and wastewater parameters. Include wet weather considerations, including any actions an operator must take to ensure equipment will optimally perform during wet weather conditions. List specific actions operators shall take when parameters are not within the required ranges;
- ii. For each primary treatment, secondary treatment, and disinfection process or other equipment critical for optimal plant operation, include specific Preventative Maintenance requirements. As part of the Preventative Maintenance for each treatment process, include daily, weekly, or monthly schedules to be followed by the plant operator that prescribe Preventative Maintenance procedures, including, at a minimum, calibration, lubrication, cleaning and replacement of equipment;
- iii. Procedures for generation and submittal of a work order whenever

a plant operator identifies an operational component of a plant process that requires Preventative Maintenance, Corrective Maintenance, or any other work. As part of the SOP, require follow-up procedures for work orders, to include response times for identifying the problem, ordering of parts if necessary, repairs or other actions taken, and close out of orders upon completion of work; and

- iv. Sampling, analysis, and reporting requirements for each plant, and procedures and schedules for sampling, analyzing, and reporting the results of all testing required under the plant's NPDES Permit for the discharge monitoring reports ("DMRs"). These procedures shall comply with the NPDES Permit and 40 C.F.R. § 136. Include the operation and maintenance schedule for calibrating sampling equipment.

41. The Sewer District shall commence implementation of the SOPs required by Paragraphs 38-39 simultaneously with submission of the SOPs to EPA and WVDEP for review and comment. The Sewer District shall make the SOPs available to persons responsible for plant O&M at all times, and shall ensure that such persons are aware of the requirements of the SOPs and have been trained in accordance with the requirements of Subsection VIII.I (Training Programs).

42. At least once each year, the Sewer District shall evaluate each SOP to determine whether any plant controls or operations necessitate revisions to the SOPs. The Sewer District shall make the revised SOPs available to EPA and WVDEP upon request.

**D. Sewage Collection Systems Maintenance Program**

43. GIS Sewage Collection Systems Map. No later than one year after the Effective Date, the Sewer District shall submit a GIS Sewage Collection Systems Map to EPA and WVDEP for review and comment. The GIS Sewage Collection Systems Map shall identify all known locations of the following:

- a. WWTPs;
- b. Package Plants;

- c. Woods II Lagoon Plant;
- d. Ecolab Pretreatment Facility;
- e. manholes;
- f. Pump Stations;
- g. Force Mains;
- h. air release valves;
- i. Sewage Collection Systems lines; and
- j. SSOs that occurred within the prior three years.

44. The Sewer District shall update the GIS Sewage Collection Systems Map as additional locations identified in Paragraph 43(a)-(i) are discovered (through sewer inspections or otherwise), acquired, or constructed. The Sewer District shall also update the map with dates and locations of SSOs, inspections, Preventative Maintenance, and Corrective Maintenance that occur subsequent to the Effective Date. For each item identified in this Paragraph, the Sewer District shall update the Map as soon as feasible, but in no event later than seven Days after the relevant event. The Sewer District shall make the updated GIS Sewage Collection Systems Map available to EPA and WVDEP upon request.

45. Sewer Line and Manhole Cleaning, Inspection, and Condition Scoring. The Sewer District shall implement a system-wide sewer line and manhole cleaning and inspection program to identify and address conditions that may cause or contribute to SSOs. For purposes of this Paragraph, “cleaning” means the physical removal from the Sewage Collection Systems of FOG, debris, roots, and/or any other material or obstructions.

a. Sewer line and manhole inspections of the areas with known SSOs (Appendix A) and areas with a risk of sewer line failure and accessibility impediments

(Appendix B) shall be performed using CCTV or equivalent alternative technology approved by EPA, after consultation with WVDEP. Inspections of areas with no known risk of sewer line failure or accessibility impediments (Appendix C) shall be performed using an industry accepted method of Sanitary Sewer Evaluation Survey including but not limited to visual inspection, manhole inspection, camera investigation, CCTV, smoke testing, dye testing, infiltration and water testing or equivalent industry accepted alternative technology.

b. The Sewer District shall complete all Sewage Collection System cleaning and inspection in accordance with the National Association of Sewer Service Companies (“NASSCO”) Sewer Pipe Cleaning Specification Guide (November 2014, and as updated thereafter).

c. When conducting inspection activities, the Sewer District shall record the condition of each Sewer Segment using a nationally recognized pipe condition scoring methodology such as the NASSCO Pipeline Assessment Certification Program (“NASSCO PACP”). The Sewer District shall include the pipe condition scoring results with the reports required by Paragraph 48 (Sewer Inspection Reports).

d. *Force Mains.* In addition to the above requirements, the Sewer District shall also examine the air-release or vacuum release valves, and visually inspect the ground surface over the entire length of the Force Main, to the extent practicable.

46. The Sewer District shall prioritize cleaning and inspection of sewer lines and manholes within the Sewage Collection Systems as follows:

a. *Areas with known SSOs:* The areas with known SSOs are identified in the map at Appendix A. No later than one year from the Effective Date, the Sewer District shall complete the cleaning and inspection of these areas of the Sewage Collection Systems.

b. *Areas with a risk of sewer line failure and accessibility impediments:* The areas with a risk of sewer line failure and accessibility impediments are identified in the map at Appendix B. No later than five years from the Effective Date, the Sewer District shall complete the cleaning of these areas of the Sewage Collection Systems. The Sewer District shall complete half of the cleaning required by this Subparagraph within the first three years from the Effective Date.

c. *Areas with no known risk of sewer line failure or accessibility impediments:* The areas with no known risk of sewer line failure or impediments to inspection and cleaning are identified in the map at Appendix C. No later than ten years from the Effective Date, the Sewer District shall determine those areas within Appendix C that require cleaning and inspections and shall complete those tasks in accordance with the inspection and cleaning procedures required in Paragraph 45. At a minimum, the Sewer District shall inspect all sewer lines that have either not been cleaned within the last three years or were installed more than three years ago to determine if cleaning is necessary. If the inspection determines that cleaning of these lines is necessary, the District shall complete such cleanings within ten years of the Effective Date of this Consent Decree. The District shall document these inspections and provide a summary of those lines cleaned and/or inspected pursuant to the requirements of Paragraph 48(c).

47. Repeat Cleanings and Evaluation of Cleaning Findings. After completion of the cleaning and inspection required by Paragraphs 45-46, the Sewer District shall implement a repeat cleaning program to re-clean blockage-prone Small Diameter Gravity Sewer Mains identified pursuant to Paragraph 48(a). The Sewer District shall establish the frequency of repeat cleaning schedules based upon blockage-related SSO history and cleaning findings indicating



heavy amounts of material. The Sewer District shall prioritize re-cleaning and inspection based on cleaning findings and the frequency of SSOs after completion of the initial cleaning round.

48. Sewer Inspection Reports.

a. No later than 18 months from the Effective Date, the Sewer District shall submit to EPA and WVDEP for review and comment a report summarizing the results of all sewers inspected pursuant to the requirements of Paragraph 46(a) (Areas with known SSOs). The inspection report shall identify and show on the GIS Sewage Collection Systems Map the condition score of each Sewer Segment using the NASSCO PACP condition scoring methodology. The inspection report shall identify the blockage-prone Small Diameter Sewer Mains that shall be subject to repeat cleanings and inspection in accordance with Paragraph 47 along with the repeat cleaning schedules based upon blockage-related SSO history and cleaning findings indicating heavy amounts of material. The report shall also provide the Sewer District's priority list for repeat cleaning and inspection in accordance with the requirements of Paragraph 47.

b. No later than five years and six months from the Effective Date, the Sewer District shall submit to EPA and WVDEP for review and comment, a report summarizing the results of the inspection of all sewers inspected pursuant to the requirements of Paragraph 46(b) (Areas with a risk of sewer line failure and accessibility issues). The inspection report shall identify and show on the GIS Sewage Collection Systems Map the condition score of each Sewer Segment using the NASSCO PACP condition scoring methodology.

c. Following completion of the cleaning and/or inspection required by Paragraph 46(c) (Areas with no known risk of sewer line failure or accessibility issues) the Sewer District shall include a summary of those lines cleaned and/or inspected with the next

semi-annual report required by Paragraph 72.

d. Sewer line cleaning and inspection that the Sewer District has performed after July 1, 2019, in a manner consistent with the requirements of Paragraph 45 shall be credited toward the Sewer District's compliance with Paragraph 46 and shall be reported in accordance with the requirements of this Paragraph.

49. Sewer Remedial Measures Plan 1. No later than two years from the Effective Date, the Sewer District shall submit to EPA for approval a Sewer Remedial Measures Plan to address the sewer deficiencies identified during the sewer inspections performed pursuant to the requirements of Paragraph 46(a) (Areas with known SSOs) of this Consent Decree ("Sewer Remedial Measures Plan 1"). Sewer Remedial Measures Plan 1 shall identify and show on the GIS Sewage Collection Systems Map the sewer lines to be remediated and the schedule for completion of each sewer line remediation project. The Sewer District shall complete implementation of Sewer Remedial Measures Plan 1 no later than three years from the date of EPA approval of Sewer Remedial Measures Plan 1.

50. Sewer Remedial Measures Plan 2. No later than six years from the Effective Date, the Sewer District shall submit to EPA for approval a Sewer Remedial Measures Plan to address the sewer deficiencies identified during the sewer inspections performed pursuant to the requirements of Paragraph 46(b) (Areas with a risk of sewer line failure and accessibility impediments) of this Consent Decree ("Sewer Remedial Measures Plan 2"). Sewer Remedial Measures Plan 2 shall identify and show on the GIS Sewage Collection Systems Map the sewer lines to be remediated and the schedule for completion of each sewer line remediation project. The Sewer District shall complete implementation of Sewer Remedial Measures Plan 2 no later than four years from the date of EPA approval of Sewer Remedial Measures Plan 2.

51. Sewage Collection Systems Capacity Assessment. Within three years of the Effective Date, the Sewer District shall conduct a Capacity Assessment of the Sewage Collection Systems to identify capacity constraints within the Sewage Collection Systems that have caused or significantly contributed to SSOs in the past or are likely to cause or significantly contribute to the future occurrence of SSOs. The Capacity Assessment shall include a GIS Map that identifies the locations that have experienced wet-weather SSOs within the prior three years. For each wet-weather SSO location, the Sewer District shall determine whether adequate capacity exists to transport current peak dry-weather flows and peak wet-weather flows. In addition, the Sewer District shall determine whether main interceptors delivering flow to the Major WWTPs and the Woods II Lagoon Plant are adequately sized to transport the current peak dry-weather flows and peak wet-weather flows. The Sewer District shall identify potential capacity constraints using standard industry practices, which may include, if appropriate, a hydraulic capacity model. The Capacity Assessment shall be submitted to EPA for review simultaneously with the Capacity Remedial Measures Plan required by Paragraph 52.

52. Sewage Collection Systems Capacity Remedial Measures Plan. No later than three years from the Effective Date, the Sewer District shall submit to EPA for approval a Capacity Remedial Measures Plan to address capacity constraints identified by the Sewage Collection Systems Capacity Assessment. The Capacity Remedial Measures Plan shall include: (a) the project name; (b) the existing sewer line or other facility that will be addressed by the remedial measures; (c) design information for the planned capacity improvement; and (d) a proposed schedule for implementation. For parallel Gravity Sewer Mains or replacement Gravity Sewer Mains, the Capacity Remedial Measures Plan shall also list the pipe size, pipe length, and the hydraulic design criteria utilized for sizing, including the maximum percentage-full allowed

in each Sewer Segment.

**E. Pump Station Compliance Requirements**

53. Pump Station Inspection Program. Within three months of the Effective Date, the Sewer District shall submit to EPA for approval a Pump Station Inspection Program designed to ensure that inspection and Preventative Maintenance are performed at a frequency sufficient to prevent Pump Station malfunctions and outages. This Program shall include requirements for weekly inspections of each Pump Station and bi-weekly inspections of each grinder pump, or more frequently as necessary to keep Pump Stations in good working order.

a. When determining the frequency of inspections required by the Pump Station Inspection Program, the Sewer District shall consider:

- i. the history of reliability and performance of the Pump Station;
- ii. the reliability of power to the Pump Station and communications with the Pump Station;
- iii. the instrumentation connected to telemetry and the trending and alarm software capabilities;
- iv. flows to the Pump Station and wet well storage capacity under various operating conditions (dry and wet weather, significant storms, etc.); and
- v. any other factors affecting Pump Station reliability and performance.

b. Each inspection under the Pump Station Inspection Program shall include an evaluation of the following:

- i. the general operating condition of the pump (sound, vibration, excessive lubrication, odor, etc.);
- ii. the pump's amperage readings;
- iii. whether the influent flows to the station are within operational ranges for the Sewage Collection System;

- iv. whether the bar screen or wet well needs cleaning or repair;
- v. whether the floats need cleaning or repair;
- vi. whether mowing or any security improvements need to be performed;
- vii. pump run-time meters;
- viii. checking and resetting conditions;
- ix. grease accumulations; and
- x. any other information necessary to assess whether the Pump Station is operating properly.

c. The Pump Station Inspection Program shall include use of a Pump Station Inspection Form (“PSI Form”) in electronic format. The PSI Form shall include all items identified in Subparagraph 53(b). The PSI Form shall also include a section for noting deficiencies and follow-up instructions for the reporting of deficiencies and creation of a work order for repair, upgrade, or replacement of the Pump Station.

54. Pump Station Corrective Action. Within three months of the Effective Date, the Sewer District shall submit to EPA for approval a schedule for Pump Station corrective actions to be completed within ten years of the Effective Date.

a. As part of the development of the schedule required by this Paragraph, the Sewer District shall prioritize Pump Stations that either caused or contributed to SSOs occurring over the past five years or are downstream of SSOs occurring over the past five years. The Sewer District shall then evaluate the list of Pump Stations using the criteria and scoring descriptions used to develop the Capital Improvement Plan.

b. The schedule required by this Paragraph shall identify each Pump Station and its schedule for corrective action, including repair, remediation, improvement/upgrade, or replacement, including the dates on which design, bidding, and construction commencement and

completion will occur. The schedule shall identify projects to be completed during each year of the ten-year period covered by the schedule, such that the work will be performed on a balanced annual basis.

55. Pump Station Emergency Operations SOP. No later than three months after the Effective Date, the Sewer District shall submit to EPA and WVDEP for review and comment a Pump Station emergency operations SOP to provide emergency operations guidance for managers and field personnel in the event of a Pump Station failure. This SOP shall include written standard emergency operating procedures for each type of Pump Station and shall include, as appropriate, emergency contact information; location(s) of auxiliary power including portable or fixed emergency generators applicable to each Pump Station; location(s) of portable pumping equipment; guidance for initiating auxiliary power with portable or fixed generators; guidance for installing portable pumps during high flow; and applicable contingency plans.

**F. FOG Public Education Program**

56. No later than six months after the Effective Date, the Sewer District shall submit to EPA and WVDEP for review and comment a FOG Public Education Program. The Sewer District shall design this Program to educate the public to help reduce the amount of FOG entering the Sewage Collection Systems from private residences and businesses, using bill insert brochures; Sewer District website announcements, information, and resources; and other materials designed to convey information to the public. The Sewer District shall designate specific staff to implement the FOG Public Education Program and shall establish performance indicators to be used to measure the effectiveness of the program.

57. Based on an evaluation of performance indicators, the Sewer District shall periodically revise the FOG Public Education Program as necessary to achieve effective

education, outreach, and reduction of FOG in the Sewage Collection Systems.

**G. Asset Management Software System**

58. Within one year of the Effective Date, the Sewer District shall implement an Asset Management Software System to manage information relating to Major WWTPs, the Ecolab Pretreatment Facility, the Woods II Lagoon Plant, Package Plants, and the Sewage Collection Systems, in accordance with the requirements of this Subsection.

59. The Asset Management Software System shall manage documentation of the following for each asset owned or operated by the Sewer District:

- a. calibration records;
- b. changes to process control settings;
- c. spill reports;
- d. citizen complaints;
- e. work order forms for Corrective Maintenance and Preventative Maintenance;
- f. completed Electronic Activity Sheets;
- g. age of the asset, if known;
- h. sampling data; and
- i. SSOs

Except as otherwise required by applicable law, documentation managed by the Asset Management Software System may be held solely in electronic form.

60. The Asset Management Software System shall include integrated GIS capability to map locations of assets, Corrective Maintenance, Preventative Maintenance, and SSOs.

61. Work Order Forms for Corrective Maintenance. The work order forms for

Corrective Maintenance included in the Asset Management Software System shall record, at a minimum:

- a. the equipment name, location, unique asset identifier and number;
- b. criticality rating of the equipment or process;
- c. date the work order was created, duration of activity, and date closed;
- d. identity of person who created, was assigned, completed, and closed the work order;
- e. description of problem/concern/failure based on field observation(s);
- f. priority rating for the repair/evaluation; and
- g. automatic retrieval of the asset's last two years of maintenance records.

62. Work Order Forms for Preventative Maintenance. The work order forms for Preventative Maintenance included in the Asset Management Software System shall record, at a minimum:

- a. the equipment name, location, unique asset identifier and number;
- b. criticality rating of the equipment or process;
- c. date the work order was created, duration of activity, and date closed;
- d. identity of person who created, was assigned, completed, and closed the work order;
- e. description of required maintenance and estimated time to complete;
- f. description of required materials (supplies, tools, personal protective equipment, etc.);
- g. description of specific training or knowledge needed prior to performing maintenance;



- h. priority rating for the repair/evaluation; and
- i. automatic retrieval of the asset's last two years of maintenance records.

63. Sewage Collection System Records. In addition to the information required by Paragraph 59-62, the Asset Management Software System shall track information relating to the cleaning and inspection required by Subsection VIII.D (Sewage Collection Systems Maintenance Program), including date, identity of person conducting the inspection/cleaning, and the findings of the cleaning, including a description of materials removed from each Sewer Segment (e.g. FOG, roots, debris) and an estimate of the amount of such material removed expressed in volume per length of pipe (e.g. ten feet of 6-inch line approximately half full of roots and grease).

64. The Sewer District shall input the following historical data into the Asset Management Software System: (a) maintenance records for two years prior to Effective Date; (b) dates and locations of SSOs for three years prior to Effective Date; and (c) effluent limit violations at the Package Plants, Woods II Lagoon Plant, or WWTPs for three years prior to the Effective Date. The Sewer District is not otherwise required to input data obtained prior to the Effective Date into the Asset Management Software System.

65. The Sewer District shall make the records managed by the Asset Management Software System available to WVDEP and EPA upon request.

#### **H. Berkeley MS4 Program**

66. No later than three months after the Effective Date, the Storm Water District shall submit to EPA a summary of the amounts necessary to fully fund the Berkeley MS4 Program. This summary shall include, at a minimum: (a) yearly total cost to operate the Berkeley MS4 Program; (b) yearly costs of each employee position; (c) yearly costs of implementing and maintaining GIS maps; (d) yearly costs of equipment expenses such as trucks, gas, meters, tools,

and software; (e) costs of any planned or necessary infrastructure projects related to MS4; and (f) any other relevant costs.

67. No later than six months after the Effective Date, the Storm Water District shall conduct stormwater monitoring at a minimum of one representative outfall in accordance with all requirements of the MS4 Permit.

68. No later than one year after the Effective Date, the Storm Water District shall develop an MS4 Manual in accordance with the requirements of Appendix D and submit the Manual to EPA for approval.

**I. Training Programs**

69. Sewer District Training Program. No later than nine months after the Effective Date, the Sewer District shall submit to EPA for approval a Training Program for the Major WWTPs, Ecolab Pretreatment Facility; Woods II Lagoon Plant; Package Plants, and Sewage Collection Systems, including a schedule for implementation of the Training Program. The Training Program shall ensure all employees are trained on official operation and maintenance procedures for their respective job functions.

- a. The Training Program shall include, at a minimum:
  - i. training on SSO response;
  - ii. training on sampling procedures, including calibration methods, holding times, calibration, and sampling frequency;
  - iii. training on regulatory reporting requirements relating to SSOs and DMRs;
  - iv. ensure employees and contractors are provided O&M manuals and applicable SOPs related to their specific assignment and discuss requirements therein. Ensure employees maintain access to the plans for the duration of their employment;
  - v. technical training to ensure that each employee and contractor has a level of knowledge, commensurate with duties, of the overall

functions of Sewage Collection Systems;

- vi. a description of the technical training required before an employee or contractor can undertake specific work assignments or tasks;
- vii. description of outside technical training and networking opportunities, such as conferences and seminars, that are made available to employees;
- viii. the job descriptions for each position and identification of the training requirements that apply to each position, including a description of the extent to which employee certification, at the state or other applicable level, is required as a basis for obtaining or maintaining a position;
- ix. description of the degree to which completed technical training and on-the-job training is tied to promotion and pay; and
- x. procedures for maintaining records of technical training, including on-the-job training, which describe how employees are to handle the submission and retention of records. Training records should include topics, materials, completion dates, and an identification by name and position of personnel who completed the training.

b. The Training Program shall provide for training to all current employees within six months of receipt of EPA approval of the Training Program and shall provide training to all new employees within 30 Days of their employment start date; provided that technical training from outside sources may occur as soon as reasonably available based on current training schedules and programs. In addition, the Training Program shall provide for annual refresher training to all employees.

70. MS4 Training Program. No later than one year after the Effective Date, the Storm Water District shall submit to EPA for approval a Training Program for the Berkeley MS4 Program, including a schedule for implementation of the Program. The MS4 Training Program shall ensure that all employees who implement the Berkeley MS4 Program are trained regarding Program implementation and the Stormwater Management Plan.

- a. The MS4 Training Program shall include, at a minimum:

- i. an explanation of the requirements of the permit, including a description of the six MCMs that are required by the permit and how they are implemented within the program;
- ii. training on the implementation of any MCM for employees and contractors who are responsible for implementation;
- iii. a review of the MS4 Manual. As part of the review, identify the location of the Manual (physical items and/or electronic items) as well as provide the ability for employees to update the manual as necessary;
- iv. an explanation of local ordinances and any other regulations which affect the implementation of the MS4 program; and
- v. procedures for maintaining records of training, which describe how employees are to handle the submission and retention of training records. Training records should include topics, materials, completion dates, and an identification by name and position of personnel who completed the training.

b. The MS4 Training Program shall provide for an initial training to all current employees within 60 Days of approval of the MS4 Manual pursuant to Paragraph 68, and to all new employees within 30 Days of their employment start date. In addition, the MS4 Training Program shall provide for annual refresher training to all employees who implement the Berkeley MS4 Program.

71. Contractor Training. The Sewer District and the Stormwater District shall ensure that all contractors retained for projects associated with Consent Decree requirements are trained on applicable Consent Decree requirements, any relevant SOPs, and with respect to stormwater projects, the MS4 Permit, approved Stormwater Management Plan, and the MS4 Manual.

## **IX. REPORTING REQUIREMENTS**

72. The Sewer District and the Storm Water District shall each submit semi-annual reports to EPA and WVDEP on July 31 and January 31 of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XX (Termination). Each

semi-annual report shall cover a six-month period (January through June, July through December) and shall include:

- a. the status of construction or compliance measures, including completion of milestones, required by Section VIII (Compliance Requirements) of this Consent Decree;
- b. a description of problems encountered or anticipated, together with implemented or proposed solutions;
- c. the status of permit applications;
- d. a description of any non-compliance with the requirements of this Consent Decree and the NPDES Permits, and an explanation of the likely cause of non-compliance and of the remedial steps taken, or to be taken, to prevent or minimize such violation;
- e. for the Storm Water District: the Annual MS4 Report required by Appendix D, if due during the reporting period; and
- f. for the Sewer District:
  - i. identification of any revisions to SOPs made by the Sewer District pursuant to Paragraph 39 during the reporting period;
  - ii. a summary of the results of any annual plant SOP evaluations conducted pursuant to Paragraph 42 during the reporting period;
  - iii. a certification of compliance with Paragraph 44 during the reporting period, along with the updated Map;
  - iv. a summary of the results of any cleaning and inspection conducted pursuant to Paragraph 46(c) (Areas with no known risk of sewer line failure or impediments to inspection and cleaning) during the reporting period;
  - v. a tabular summary of SSOs that includes all SSOs reported during the period covered by the semi-annual report, including the location by street address or other appropriate identifier, name of the receiving water if applicable, causes of each SSO (such as grease, roots, lift station failure, capacity constraints, or vandalism), whether the SSO occurred during dry or wet weather, and an estimate of the volume of each SSO;

- vi. a tabular summary of effluent limit violations occurring at each WWTP owned or operated by the Sewer District; and
- vii. a discussion of progress in satisfying the obligation to perform the State SEP required by Section VII (State Supplemental Environmental Project) of this Consent Decree including, at a minimum, a narrative description of activities undertaken; status of any construction or compliance measures, including the completion of any milestones set forth in the State SEP Work Plan attached as Appendix E hereto, and a summary of costs incurred since the previous report.

73. If either Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, the Defendant shall notify DOJ, EPA, and the State of such violation and its likely duration, in writing, within ten business Days of the date Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, the Defendant shall so state in the report. The Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the date the Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendants of their obligation to provide the notice required by Section XI (Force Majeure).

74. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting either Defendant's performance under this Decree, or the performance of its Facilities, may pose an immediate threat to the public health or welfare or the environment, the Defendant shall notify EPA and the State as soon as possible, but no later than 24 hours after the Defendant first knew of the violation or event. Notification to EPA shall be by email to [greenwald.michael@epa.gov](mailto:greenwald.michael@epa.gov); notification to the State shall be by phone call to the WVDEP

Emergency Spill Hotline, 1-800-642-3074. This procedure is in addition to the requirements set forth in the preceding Paragraph.

75. All reports shall be submitted to the persons designated in Section XVI (Notices). Each report submitted by a Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

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 the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than 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.

76. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

77. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the Clean Water Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

## **X. STIPULATED PENALTIES**

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

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

80. Violation of Compliance Requirements of Section VII of this Consent Decree.

The following stipulated penalties shall accrue per violation per Day for each Day a Defendant fails to meet any deadline set forth in Section VII (Compliance Requirements) or Appendix D (MS4 Manual Requirements) of this Consent Decree, including deadlines set forth in any work plan or schedule approved thereunder, with the exception of deadlines relating to the submission of reports:

<u>Penalty Per Violation Per Day</u>	<u>Period of Non-Compliance</u>
\$500	1 <sup>st</sup> to 15 <sup>th</sup> Day
\$750	16 <sup>th</sup> to 30 <sup>th</sup> Day
\$1,500	31 <sup>st</sup> to 60 <sup>th</sup> Day
\$3,000	After 60 Days

81. Violation of Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements for submission of reports in Section VIII (Compliance Requirements) and Section IX (Reporting Requirements):

<u>Penalty Per Violation Per Day</u>	<u>Period of Non-Compliance</u>
\$250	1 <sup>st</sup> to 15 <sup>th</sup> Day
\$500	16 <sup>th</sup> to 30 <sup>th</sup> Day
\$1,000	31 <sup>st</sup> to 60 <sup>th</sup> Day
\$3,000	After 60 Days

82. Effluent Limit Violations, NPDES Permit No. WV0082759 Outlets 001-004 and all other NPDES Permits except NPDES No. WV0105830. The following stipulated penalties shall accrue against the Sewer District per violation per Day for each violation of any effluent



limit contained in NPDES Permit No. WV0082759 Outlets 001-004 and all other NPDES Permits except NPDES No. WV0105830, that occurs after the date of lodging:

a. Type of Violation: Daily/Instantaneous Effluent Limit

<u>Penalty Per Violation</u>	<u>Date of Effluent Limit Violation</u>
\$500	1 <sup>st</sup> through 12 <sup>th</sup> month after Effective Date
\$1,000	13 <sup>th</sup> through 24 <sup>th</sup> month after Effective Date
\$2,000	25 <sup>th</sup> month after Effective Date and beyond

b. Type of Violation: Monthly Average Effluent Limit

<u>Penalty Per Violation</u>	<u>Date of Effluent Limit Violation</u>
\$750	1 <sup>st</sup> through 12 <sup>th</sup> month after Effective Date
\$1,000	13 <sup>th</sup> through 18 <sup>th</sup> month after Effective Date
\$1,500	19 <sup>th</sup> through 24 <sup>th</sup> month after Effective Date
\$1,750	25 <sup>th</sup> month after Effective Date and beyond

83. SSOs.

a. The following stipulated penalties shall accrue against the Sewer District for each SSO that discharges into waters of the United States or waters of West Virginia:

<u>Penalty Per SSO</u>	<u>Date of SSO</u>
\$200	Within one year of Effective Date
\$750	Between two and three years of Effective Date
\$1,500	More than three years after Effective Date

b. The following stipulated penalties shall accrue against the Sewer District for each SSO that does not reach waters of the United States or waters of West Virginia:

<u>Penalty Per SSO</u>	<u>Date of SSO</u>
\$100	Within one year of Effective Date
\$300	Between two and three years of Effective Date
\$1,000	More than three years after Effective Date

84. Any violation subject to stipulated penalties under Paragraph 82 (Effluent Limit Violations) shall not be subject to stipulated penalties under Paragraph 83 (SSOs).

85. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalty required to be paid under Section VI (Civil Penalty) when due, Defendants shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late.

86. State SEP. If the Sewer District fails to satisfactorily complete the State SEP in accordance with the requirements of Section VII (State Supplemental Environmental Project) and Appendix E (State SEP Work Plan), the Sewer District shall pay stipulated penalties to WVDEP for each Day for which it fails to satisfactorily complete the State SEP, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Non-Compliance</u>
\$500	1 <sup>st</sup> through 14 <sup>th</sup> Day
\$1,000	15 <sup>th</sup> through 30 <sup>th</sup> Day
\$1,500	31 <sup>st</sup> Day and beyond

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

88. Defendants shall pay stipulated penalties to the United States and WVDEP within 30 Days of receiving a written demand by either Plaintiff. The written demand shall identify the

specific Defendant for which stipulated penalties have accrued. The applicable Defendant shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to the State, except that the Defendant shall pay 100 percent of stipulated penalties assessed under Paragraph 86 (State SEP) to the State. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

89. Either Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

90. Stipulated penalties shall continue to accrue as provided in Paragraph 87 during any Dispute Resolution, but need not be paid until the following:

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

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

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

91. Defendants shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 12 and with the notice required by Paragraph 13, except that the notice shall state that the payment is for stipulated penalties and shall state for which violation(s) the

penalties are being paid.

92. Defendants shall pay stipulated penalties owing to the State in the manner set forth in Paragraph 14 and with the notice required by Paragraph 15, except that the notice shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

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

94. The payment of penalties and interest, if any, shall not alter in any way a Defendant's obligation to complete the performance of the requirements of this Consent Decree.

95. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for either Defendant's violation of this Decree or applicable law, including but not limited to an action against a Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

## **XI. FORCE MAJEURE**

96. "Force majeure," for purposes of this Consent Decree, is defined as any event

arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

97. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Defendant shall provide notice orally or by email to Michael Greenwald, 215-814-2398, [greenwald.michael@epa.gov](mailto:greenwald.michael@epa.gov) within three business days of when the Defendant first knew that the event might cause a delay. Within seven Days thereafter, the Defendant shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by

such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

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

99. If EPA, after consultation with WVDEP, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Defendant in writing of EPA's decision.

100. If either Defendant elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, the Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Defendant complied with the requirements of Paragraphs 96 and 97. If the Defendant carries this burden, the delay at issue shall be deemed not to be a violation by the Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

## **XII. DISPUTE RESOLUTION**

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

102. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when a Defendant sends DOJ and EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 60 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 20 Days after the conclusion of the informal negotiation period, the Defendant invokes formal dispute resolution procedures as set forth below.

103. Formal Dispute Resolution. A Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ and EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the Defendant's position and any supporting documentation relied upon by Defendant.

104. The United States shall send its Statement of Position within 45 Days of receipt of the Defendant's Statement of Position. The United States' Statement of Position shall include,

but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on the Defendant, unless the Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

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

106. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 103 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with



law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 103, the Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the Objectives of the Consent Decree.

107. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 90. If a Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

### **XIII. INFORMATION COLLECTION AND RETENTION**

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

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

109. Upon request, Defendants shall provide EPA and WVDEP or their authorized representatives splits of any samples taken by Defendants. Upon request, EPA and WVDEP shall provide Defendants splits of any samples taken by EPA or WVDEP.

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

111. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States and WVDEP at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or WVDEP, Defendants shall deliver any such documents, records, or other information to EPA or WVDEP. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a

description of the subject of the document, record, or information; and (f) the privilege asserted by the Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

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

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

#### **XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

114. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the date of lodging.

115. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 114. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants’ Facilities, whether related to the violations addressed in this Consent Decree or

otherwise.

116. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Facilities, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 114.

117. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein.

118. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Water Act, 33 U.S.C. §1291, et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

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

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

#### **XV. COSTS**

121. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

#### **XVI. NOTICES**

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

As to DOJ by email:

eescdcopy.enrd@usdoj.gov  
Re: DJ # 90-5-1-1-11893

As to DOJ by mail:

EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DJ # 90-5-1-1-11893

As to EPA:

Section Chief, NPDES Enforcement  
Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency, Region 3  
pratt.stacie@epa.gov

and

Pamela Lazos Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 3  
215-814-2658  
lazos.pamela@epa.gov

As to the State/WVDEP:

Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
jeremy.w.bandy@wv.gov

As to Defendants:

General Manager  
Berkeley County Public Service Sewer District and  
Berkeley County Public Service Storm Water  
District  
65 District Way  
Martinsburg, WV 25402  
cbkeller@bcpssd.com  
Richard.lewis@steptoe-johnson.com

123. Any Party may, by written notice to the other Parties, change the designated recipient, contact information, or manner of transmission provided in this Consent Decree.

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

#### **XVII. EFFECTIVE DATE**

125. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendants hereby agree that they shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate as of the date of the United States' or the Court's decision.

### **XVIII. RETENTION OF JURISDICTION**

126. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XII (Dispute Resolution) and XIX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

### **XIX. MODIFICATION**

127. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. Nonmaterial changes that may be agreed to in writing by the Parties without Court approval include:

- a. Extension of any deadline included in this Consent Decree or in any EPA-approved submission under the Decree for a period of up to 60 Days, provided that any such extension does not extend the completion of the requirements in Section VIII (Compliance Requirements) beyond ten years;
- b. Changes to projects included in any EPA-approved submission under the Consent Decree, including the reprioritization, substitution, or redefinition of projects, provided that the Defendant demonstrates that the requested changes result in equal or better CWA compliance benefits and comply with applicable Consent Decree requirements;
- c. Changes in investigation and/or remediation techniques as a result of technology advancements or implementation experience so long as the specific Consent Decree requirements are met;
- d. Changes to information required to be maintained by the Asset

Management Software System as a result of implementation experience; and

e. Changes to the MS4 Manual as a result of State-approved modifications to the MS4 Permit or associated Storm Water Management Plan.

128. A Defendant's request for modification may be based, among other things, on: (a) integrated planning elements developed in accordance with U.S. EPA's Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued on June 5, 2012; or (b) a current Financial Capability Assessment, which may include additional financial information (per U.S. EPA's Financial Capability Assessment Framework, issued on November 24, 2014). If either the Integrated Municipal Stormwater and Wastewater Planning Approach Framework or the Financial Capability Assessment Framework is modified after the Effective Date, the Defendant's request for modification shall be based on the version of the Framework(s) that is in effect on the Day that the request for modification is submitted to the Plaintiffs.

129. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 106, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## **XX. TERMINATION**

130. After Defendants have completed the requirements of Section VII (Compliance Requirements), have thereafter maintained satisfactory compliance with this Consent Decree and Defendants' NPDES permits for a period of three years, have complied with all other requirements of this Consent Decree, including those relating to the State SEP required by Section VII, and have paid the civil penalty and any accrued stipulated penalties as required by



this Consent Decree, Defendants may serve upon the United States and the State a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

131. The Storm Water District may separately request termination of its obligations under the Consent Decree if it has satisfied all applicable requirements of Paragraph 130.

132. Following receipt by the United States and the State of a Request for Termination, the applicable Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the applicable Defendant(s) have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with WVDEP, agrees that the Decree may be terminated as to the applicable Defendant, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree as to that Defendant.

133. If the United States, after consultation with the State, does not agree that the Decree may be terminated, the applicable Defendant may invoke Dispute Resolution under Section XII. However, the Defendant shall not seek Dispute Resolution of any dispute regarding termination until 120 Days after service of its Request for Termination.

## **XXI. PUBLIC PARTICIPATION**

134. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7 and 47 C.S.R. 10, Section 16.2. The United States and the State each reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of

this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States or the State has notified Defendants in writing that it no longer supports entry of the Decree.

## **XXII. SIGNATORIES/SERVICE**

135. Each undersigned representative of Defendants and of the WVDEP, and the Deputy Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice identified on the DOJ signature page below, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

136. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

## **XXIII. INTEGRATION**

137. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than Deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in

this Consent Decree.

#### **XXIV. FINAL JUDGMENT**

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

#### **XXV. 26 U.S.C. § 162(f)(2)(a)(ii) IDENTIFICATION**

139. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section III (Applicability), Paragraph 6; Section VIII.A (General Compliance Requirements), Paragraphs 25-26 and 30; Section VIII.B (Comprehensive Performance Evaluations and Corrective Action Plans), Paragraphs 32-37; Section VIII.C (Standard Operating Procedures), Paragraphs 38-42; Section VIII.D (Sewage Collection Systems Maintenance Program), Paragraphs 43-52; Section VIII.E (Pump Station Compliance Requirements), Paragraphs 53-55; Section VIII.F (FOG Public Education Program), Paragraphs 56-57; Section VIII.G (Asset Management Software System), Paragraphs 58-65; Section VIII.H (Berkeley MS4 Program), Paragraphs 66-68 and related Appendix D; Section VIII.I (Training Programs), Paragraphs 69-71; Section IX (Reporting Requirements), Paragraphs 72 (except with respect to the State SEP), 73, and 75; and Section XIII (Information Collection and Retention), Paragraphs 108-111, is restitution or required to come into compliance with law.

#### **XXVI. APPENDICES**

140. The following Appendices are attached to and part of this Consent Decree:

“Appendix A” is a map of Sewage Collection System Areas with Known SSOs

“Appendix B” is a map of Sewage Collection System Areas with Risk of Sewer Line Failure and Accessibility Impediments

“Appendix C” is a map of Sewage Collection System Areas with No Known Risk of Sewer Line Failure or Accessibility Impediments

“Appendix D” is the MS4 Manual Requirements

“Appendix E” is the State SEP Work Plan

“Appendix F” is a Gantt chart with deadlines set forth in this Consent Decree.

Dated and entered this \_\_\_ day of \_\_\_\_\_, 2021.

---


UNITED STATES DISTRICT JUDGE

Signature Page to Consent Decree in *United States and West Virginia Department of Environmental Protection v. Berkeley County Public Service Sewer District*, N.D. WV

FOR THE UNITED STATES OF AMERICA:

TODD KIM  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

11/15/2021  
Date


  
\_\_\_\_\_  
LAURA A. THOMS  
Senior Attorney, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044  
Telephone: (202) 305-0260  
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Email: [laura.thoms@usdoj.gov](mailto:laura.thoms@usdoj.gov)

Signature Page to Consent Decree in *United States and West Virginia Department of Environmental Protection v. Berkeley County Public Service Sewer District*, N.D. WV

FOR THE UNITED STATES OF AMERICA:

07/12/2021

Date

  
\_\_\_\_\_  
RANDOLPH J. BERNARD  
Acting United States Attorney  
Northern District of West Virginia

Signature Page to Consent Decree in *United States and West Virginia Department of Environmental Protection v. Berkeley County Public Service Sewer District*, N.D. WV

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

6/21/2021

Date

s/ Diana Esher

DIANA ESHER

Acting Regional Administrator

U.S. Environmental Protection Agency, Region 3

1650 Arch Street

Philadelphia, PA 19103-2029

6/11/2021

Date

s/ Cecil Rodrigues

CECIL RODRIGUES

Regional Counsel

U.S. Environmental Protection Agency, Region 3

Office of Regional Counsel

1650 Arch Street

Philadelphia, PA 19103-2029

6/8/2021

Date

s/ Pamela Lazos

PAMELA LAZOS

Senior Assistant Regional Counsel

U.S. Environmental Protection Agency, Region 3

Office of Regional Counsel

1650 Arch Street

Philadelphia, PA 19103-2029

Signature Page to Consent Decree in *United States and West Virginia Department of Environmental Protection v. Berkeley County Public Service Sewer District*, N.D. WV

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

10/29/2021  
Date

s/ Rosemarie Kelley  
Rosemarie Kelley  
Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

10/28/2021  
Date

s/Nathan Mark Pollins  
MARK POLLINS  
Director, Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

9/22/2021  
Date


s/Dane Wilson  
DANE WILSON  
Attorney Advisor  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency



Signature Page to Consent Decree in *United States and West Virginia Department of Environmental Protection v. Berkeley County Public Service Sewer District*, N.D. WV


FOR THE STATE OF WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

7/27/21  
Date

  
SCOTT DRIVER  
Senior Counsel  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street Southeast  
Charleston, WV 25304  
(304) 926-0499 x1453  
Charles.S.Driver@wv.gov

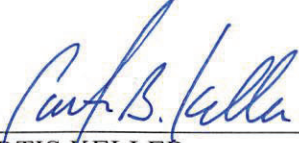

07/26/21

Date

  
KATHRYN EMERY  
Acting Director  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street Southeast  
Charleston, WV 25304  
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Signature Page to Consent Decree in *United States and West Virginia Department of Environmental Protection v. Berkeley County Public Service Sewer District*, N.D. WV

FOR BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT:

<u>9/29/2021</u> Date	 CURTIS KELLER General Manager 65 District Way P.O. Box 944 Martinsburg, WV 25402 304-263-8344
<u>10/1/2021</u> Date	 RICHARD LEWIS Member, Steptoe & Johnson PLLC 707 Virginia Street East Charleston, WV 25301 304-353-8133 Richard.lewis@steptoe-johnson.com Counsel to the District

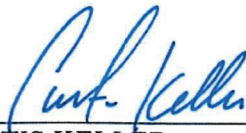
Agent for Service of Process:

RICHARD LEWIS  
707 Virginia Street East  
Charleston, WV 25301  
304-353-8133


Signature Page to Consent Decree in *United States and West Virginia Department of Environmental Protection v. Berkeley County Public Service Sewer District*, N.D. WV

FOR BERKELEY COUNTY PUBLIC SERVICE STORM WATER DISTRICT:

5/20/21  
Date

  
\_\_\_\_\_  
CURTIS KELLER  
General Manager  
65 District Way  
P.O. Box 944  
Martinsburg, WV 25402  
304-263-8344  
cbkeller@bcpssd.com

5/20/21  
Date

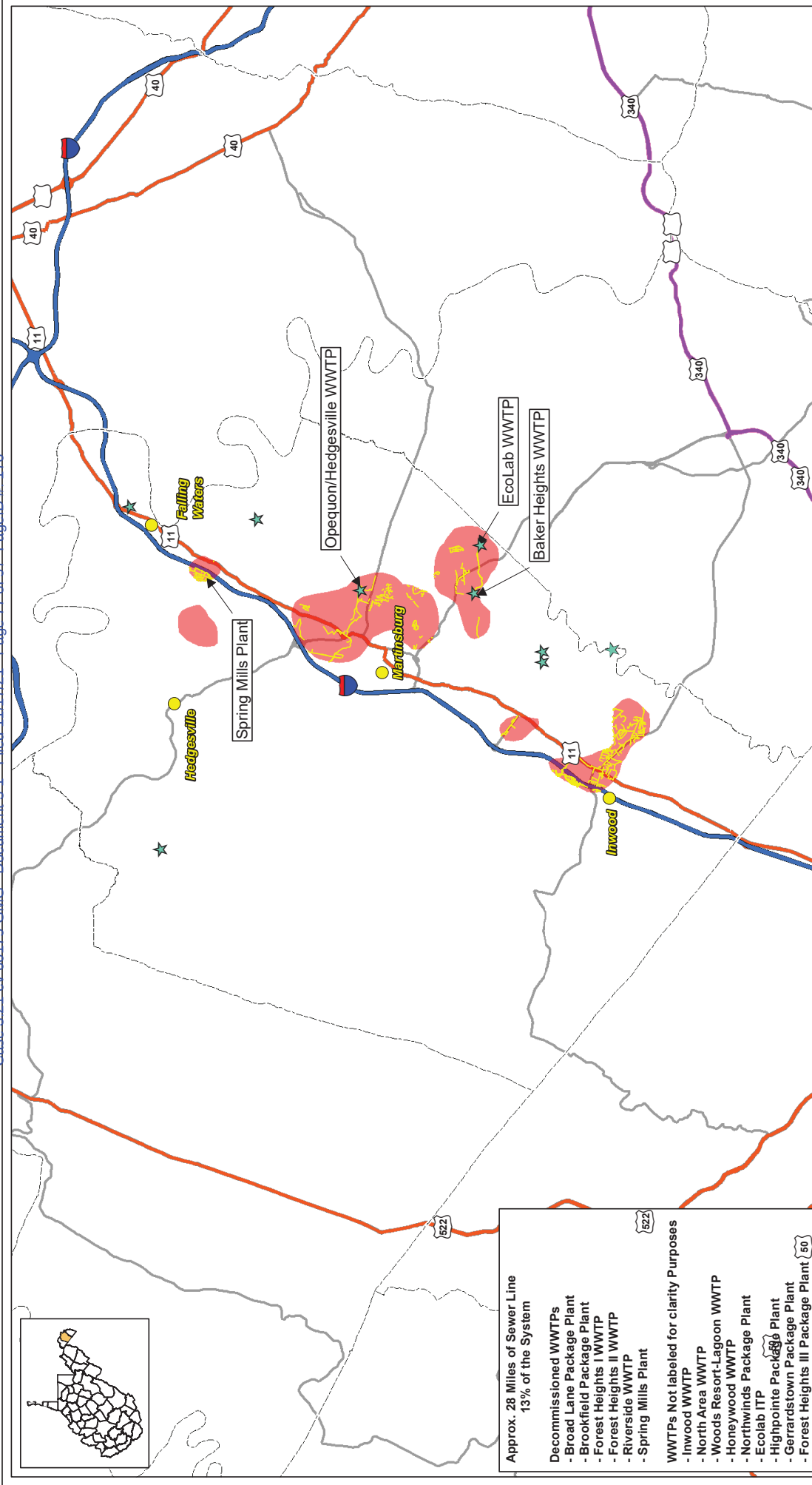
  
\_\_\_\_\_  
RICHARD LEWIS  
Member, Steptoe & Johnson PLLC  
707 Virginia Street East  
Charleston, WV 25301  
304-353-8133  
[Richard.lewis@steptoe-johnson.com](mailto:Richard.lewis@steptoe-johnson.com)  
Counsel to the District

Agent for Service of Process:

RICHARD LEWIS  
707 Virginia Street East  
Charleston, WV 25301  
304-353-8133

**APPENDIX A**

**MAP OF SEWAGE COLLECTION SYSTEM  
AREAS WITH KNOWN SSOs**



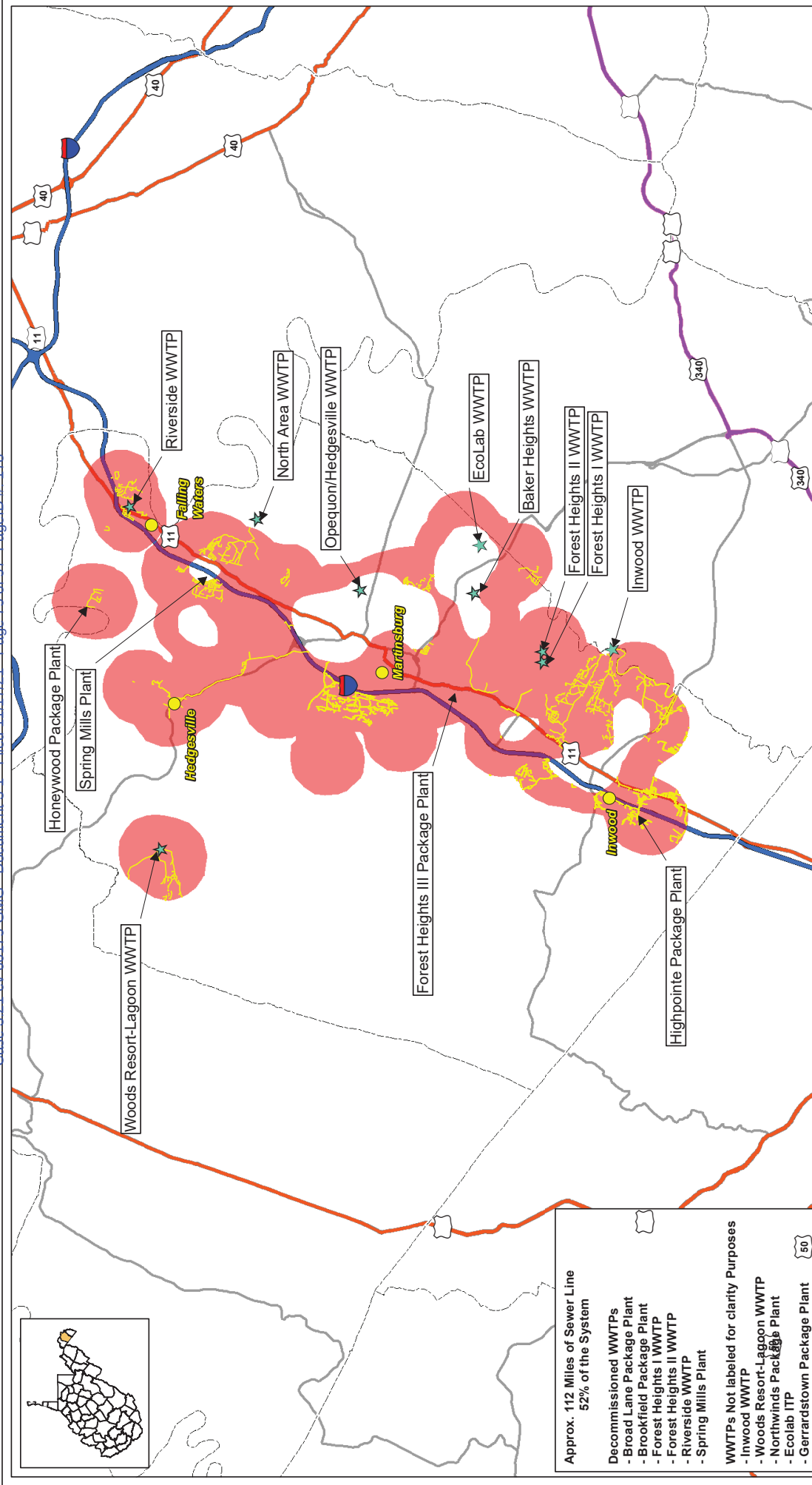
- Approx. 28 Miles of Sewer Line  
13% of the System**
- Broad Lane Package Plant
  - Brookfield Package Plant
  - Forest Heights I WWTP
  - Forest Heights II WWTP
  - Forest Heights III WWTP
  - Forest Heights IV Package Plant
  - Spring Mills Plant
- WWTPs Not labeled for clarity Purposes**
- Inwood WWTP
  - North Area WWTP
  - Woods Resort-Lagoon WWTP
  - Honeywood WWTP
  - Northwinds Package Plant
  - EcoLab ITP
  - Highpointe Package Plant
  - Gerrardstown Package Plant
  - Forest Heights III Package Plant

<b>DETAILS:</b> Drawn By: sshank Date: 1/12/2021 Checked By: scook Date: 1/12/2021 Project No. 020-1652 Sheet Number: Overall		EXTENT INDICATOR 	Legend ★ WWTP — Sewer Line of Interest ■ Area of Interest --- County Boundary	1 inch = 3 miles 0 1.25 2.5 5 Miles	Year One Improvement Map Berkeley County PSSD Berkeley County - West Virginia
				<b>THRASHER</b> Berkeley County Public Service Sewer District Copyright (C) 2020 THE THRASHER GROUP, INC.	

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**APPENDIX B**

**MAP OF SEWAGE COLLECTION SYSTEM  
AREAS WITH RISK OF SEWER LINE FAILURE AND  
ACCESSIBILITY IMPEDIMENTS**



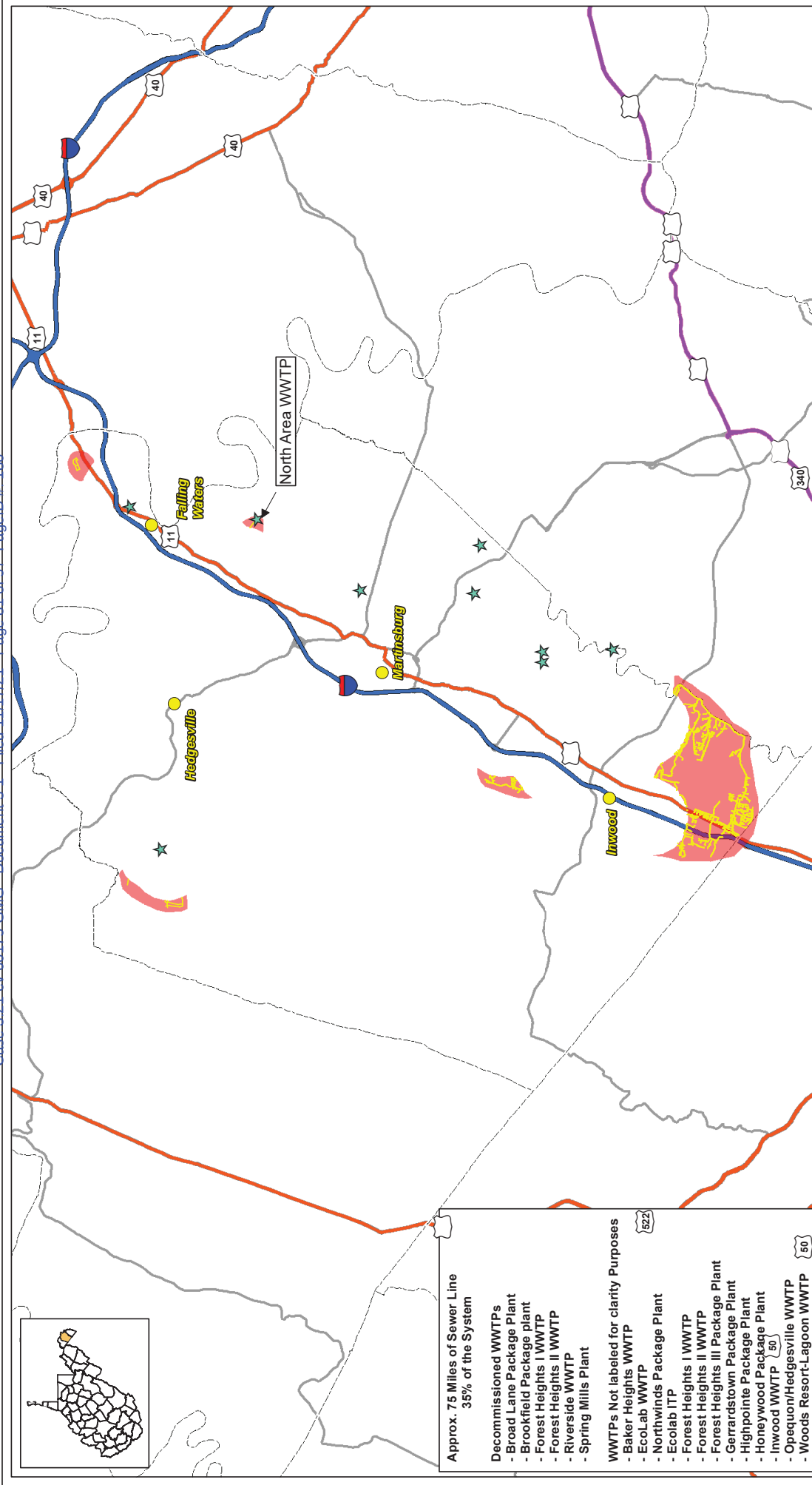
<b>DETAILS:</b> Drawn By: sshank Date: 1/12/2021 Checked By: scook Date: 1/12/2021 Project No. 020-1652 Sheet Number: Overall		EXTENT INDICATOR 	Legend WWTP Sewer Line of Interest Area of Interest County Boundary	1 inch = 3 miles 0 1.25 2.5 5 Miles	Year Two - Five Improvement Map Berkeley County PSSD Berkeley County - West Virginia
				<b>THRASHER</b> Berkeley County Public Service Sewer District Copyright (C) 2020 THE THRASHER GROUP, INC.	

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**APPENDIX C**

**MAP OF SEWAGE COLLECTION SYSTEM  
AREAS WITH NO KNOWN RISK OF SEWER LINE FAILURE  
OR ACCESSIBILITY IMPEDIMENTS**





<b>Year Six - Ten Improvement Map</b> Berkeley County PSSD Berkeley County - West Virginia		<b>THRASHER</b> Berkeley County Public Service Sewer District	
1 inch = 3 miles 0 1.25 2.5 5 Miles		Legend ★ WWTP — Sewer Line of Interest ■ Area of Interest □ County Boundary	
<b>DETAILS:</b>		EXTENT INDICATOR 	
Drawn By: sshank Checked By: scook Project No. 020-1652	Date: 1/12/2021 Date: 1/12/2021 Sheet Number: Overall	DISCLAIMER: The information contained herein is the sole property of The Thrasher Group, Inc. Reproduction of these documents in whole or in part, for any reason without prior written permission, is strictly prohibited. Copyright (C) 2020 THE THRASHER GROUP, INC.	

- Approx. 75 Miles of Sewer Line**  
**35% of the System**
- Decommissioned WWTPs**
- Broad Lane Package Plant
  - Brookfield Package plant
  - Forest Heights I WWTP
  - Forest Heights II WWTP
  - Riverside WWTP
  - Spring Mills Plant
- WWTPs Not labeled for clarity Purposes**
- Baker Heights WWTP
  - EcoLab WWTP
  - Northwinds Package Plant
  - Ecolab ITP
  - Forest Heights I WWTP
  - Forest Heights II WWTP
  - Forest Heights III Package Plant
  - Gerrardstown Package Plant
  - Highpointe Package Plant
  - Honeywood Package Plant
  - Inwood WWTP
  - Opequon/Hedgesville WWTP
  - Woods Resort-Lagoon WWTP

## **APPENDIX D**

### **MS4 MANUAL REQUIREMENTS**

1. No later than one year from the Effective Date, the Storm Water District shall develop and submit to EPA for approval an MS4 Manual. The MS4 Manual shall detail general programmatic requirements and include plans for implementing each MCM identified in the MS4 Permit, along with milestones appropriate for each MCM and a schedule for implementation of each milestone. The Manual must provide for complete implementation of the Berkeley MS4 Program within five years of the Effective Date. Any changes to the Manual after its approval by EPA must also be submitted to EPA for approval.

2. Each plan for compliance with an MCM shall include: (a) a list of all personnel required to implement the MCM; (b) the responsibilities and duties of each personnel responsible for implementing the MCM; and (c) an identification of the topics and frequency of required training under the MS4 Training Program identified in Paragraph 69 of the Consent Decree for each personnel responsible for implementing the MCM.

3. In addition, the following requirements apply:

a. The plan for complying with MCM 1 (Public Education and Outreach) of the MS4 Permit shall include:

- i. A list of all individuals and entities that have potential to affect stormwater quality (the “Target Audiences”). For each Target Audience, identify the size of the audience, pollutants of concern, and the location(s) of facility(s) if applicable. At a minimum, the following Target Audiences shall be listed:
  1. Residents;
  2. Engineers, contractors, developers, review staff, and land use planners;
  3. Businesses;

4. Industries that have stormwater permits or that have the potential to affect stormwater discharges;
  5. Elected officials, policy makers, and County planning staff;
  6. Homeowners, landscapers, and property managers; and
  7. The Storm Water District's staff, employees, and contractors.
- ii. Identification of an education and outreach strategy for each Target Audience identified in the plan for complying with MCM 1, including a description of the rationale for why the identified education and outreach strategy is applicable to the Target Audience. For any pollutants of concern identified, the strategy must document how the education and outreach strategy will address the pollutants with the Target Audience. As part of the education and outreach strategy, the Storm Water District shall have a method of evaluating the effectiveness of the Storm Water District's education and outreach strategy for each targeted audience;
  - iii. Procedures for maintaining a separate electronic file with documentation summarizing feedback received as a result of the public education and outreach efforts conducted by the Storm Water District in accordance with the requirements of the MS4 Permit; and
  - iv. Procedures for retaining all records of public education and public outreach activities conducted in accordance with the requirements of the MS4 Permit.

b. The plan for complying with MCM 2 (Public Involvement and Participation) of the MS4 Permit shall include the following:

- i. A link on the Storm Water District's website to the MS4 Manual and contact information for the appropriate personnel so that the public can request further information regarding the Manual;
- ii. Information on the Storm Water District's website identifying how the public can participate in stormwater management in accordance with the requirements of MCM 1 of the MS4 Permit. This information shall also include contact information for the requisite personnel to allow the public to inquire further as to how they may participate in stormwater management;
- iii. An online form for submitting comments and a process for

consideration of public comments on the Storm Water District's Stormwater Management Plan or its MS4 Manual; and

- iv. A method of communication for informing the public about upcoming public participation opportunities in accordance with the requirements of the MS4 Permit.

- c. The plan for complying with MCM 3 (Illicit Discharge Detection and

Elimination ("IDDE")) of the MS4 Permit shall include the following:

- i. Map(s) of the Storm Water District's storm sewer system in accordance with the requirements of the MS4 Permit, along with a detailed plan for developing an electronic map showing:
  - 1. Priority areas likely to have illicit discharges;
  - 2. Evaluation of land uses associated with business/industrial activities;
  - 3. Previous complaint locations;
  - 4. Evaluation of the storage of large quantities of materials that could result in spills; and
  - 5. Any other information required under the MS4 Permit.
- ii. A strategy to maximize reduction of pollutants of concern to 303(d) or TMDL receiving waters and a strategy to correlate data from field assessments to 303(d) or TMDL receiving waters in accordance with the requirements of the MS4 Permit;
- iii. Procedures for IDDE inspections and screenings in accordance with the requirements of the MS4 Permit and any additional requirements under applicable Berkeley County Council Ordinances;
- iv. A response procedure for illicit discharges found by or reported to the Storm Water District, including:
  - 1. A procedure for investigating any information suggesting illicit discharges within 15 Days. Under this requirement, the Storm Water District shall identify the source of the discharge, connections, nature and volume of the discharge, and party responsible for the discharge, if known;
  - 2. A procedure for containing illicit discharges; and

3. A procedure for enforcement against illicit discharges, including escalating enforcement procedures, in accordance with the requirements of the MS4 Permit and any additional requirements under applicable Berkeley County Council Ordinances;
- v. A procedure for responding to, identifying, and eliminating illicit connections, including the prioritization of illicit connections that pose an imminent threat to water quality, in accordance with the requirements of the MS4 Permit;
- vi. A process for annually reviewing IDDE ordinances or regulatory mechanisms and providing necessary revisions to the Berkeley County Council for review and ratification;
- vii. An electronic system for documenting IDDE calls received and follow-up actions taken to eliminate pollution; and
- viii. Implementation of an electronic calendar. The calendar will be updated yearly with tentative dates of activities, as well as regularly with all of the following information:
  1. dates of annually reviewing IDDE ordinances;
  2. dates of submittal of proposed IDDE ordinance changes to Berkeley County Council for review and ratification;
  3. inspections of priority outfalls;
  4. dry weather screenings;
  5. field assessment of at least two water bodies and one every year thereafter; and
  6. investigations of any information suggesting pollution, to be scheduled within fifteen Days of receipt of information.

d. The plan for complying with MCM 4 (Controlling Runoff from

Construction Sites) of the MS4 Permit shall include the following:

- i. A process for annually reviewing and proposing updates to relevant Berkeley County Council Ordinances or regulatory mechanisms that address stormwater runoff from construction sites in accordance with the requirements of the MS4 Permit;
- ii. A process to train construction site operators on how to prepare a stormwater pollution prevention plan. The Storm Water District

shall also provide the operators with a sample stormwater prevention plan that the operators can utilize to develop their own plan;

- iii. An annual process to review and address any repeated non-compliance identified at construction sites with development of training materials or procedures to ensure further non-compliance is reduced in accordance with the requirements of the MS4 Permit and any additional requirements under applicable Berkeley County Council Ordinances;
- iv. An application process to track construction sites and document sediment and erosion control measures as required under the MS4 Permit;
- v. A process for plan review and site inspections. This shall include:
  - 1. A process for plan review of construction sites;
  - 2. Identification of priority sites for inspections and enforcement, including the prioritization of inspections of projects located in sewersheds that discharge to 303(d) or TMDL waters; and
  - 3. Procedures for inspecting permitted sites during construction to verify proper installation and maintenance of erosion and sediment controls. Also include copies of inspection checklists or inspection templates if used;
- vi. Enforcement strategy to respond to issues of non-compliance in accordance with the requirements of the MS4 Permit and any additional requirements under applicable Berkeley County Council Ordinances;
- vii. An electronic system of storing all records related to construction activities, including inspection reports, warning letters, and enforcement documentation in accordance with the requirements of the MS4 Permit and any additional requirements under applicable Berkeley County Council Ordinances; and
- viii. Implementation of an electronic calendar. The calendar will be updated yearly with tentative dates of activities, as well as regularly with all of the following information:
  - 1. dates of annually reviewing ordinances;
  - 2. dates of submittal of proposed ordinance revisions to the Berkeley County Council for review and ratification;

3. coordination of plan review of construction sites;
4. inspections of permitted sites during construction;
5. an annual process to review any repeated non-compliance identified at construction sites in accordance with the requirements of the MS4 Permit and any additional requirements under applicable Berkeley County Council Ordinances; and
6. an annual summary of inspections and enforcement activities for construction activities noted herein.

e. The plan for complying with MCM 5 (Controlling Runoff from New Development and Redevelopment) shall include the following:

- i. Procedures for project review and approval, inspection, and enforcement in accordance with the requirements of the MS4 Permit. This shall include:
  1. A plan for reviewing all new and redevelopment projects to control stormwater discharge rates, volumes, velocities, durations, and temperatures;
  2. A maintenance agreement and maintenance plan for all development projects subject to long term stormwater controls. For privately-owned stormwater structures, procedures for maintaining copies of the maintenance agreements and maintenance plans that ensure privately-owned stormwater structures are properly maintained in accordance with the requirements of the MS4 Permit;
  3. A process for reviewing, on an annual basis, whether property owners or operators have provided verification of maintenance for approved stormwater management practices;
  4. An electronic tracking system for stormwater management practices at new development and redevelopment projects, in accordance with the requirements of the MS4 Permit;
  5. Procedures for maintaining copies of inspection reports of stormwater BMPs, in accordance with the requirements of the MS4 Permit; and
  6. An enforcement and response plan to ensure stormwater BMPs are properly maintained in accordance with the requirements of the MS4 Permit and any additional requirements under

applicable Berkeley County Council Ordinances;

- ii. A strategy to incorporate watershed protection elements into new development and redevelopment projects in accordance with the requirements of the MS4 Permit. As part of this strategy, the Storm Water District will develop resources that can be provided to new development and redevelopment owners/operators. The strategy shall include:
  - 1. A process to annually review watershed protection elements as detailed in the MS4 Permit. As part of this process, the Storm Water District shall also include a process for how it intends to present the need for inclusion of those elements in the local ordinances and/or regulations to ensure enforcement of these elements on new development and redevelopment sites to the Berkeley County Council;
  - 2. A list of goals to incorporate, implement, assess, and enforce watershed protection elements in the MS4 Permit and how it intends to complete said goals during the term of the MS4 Permit;
  - 3. A plan to include site and neighborhood design elements in tandem with watershed protection elements, in accordance with the requirements of the MS4 Permit; and
  - 4. A strategy for reducing impervious surfaces, in accordance with the requirements of the MS4 Permit;
- iii. Identification of “Hot Spots,” in accordance with the requirements of the MS4 Permit;
- iv. For any redevelopment projects for existing public streets or parking lots, evaluate the need for runoff reduction BMPs to ensure 100% runoff reduction requirements, and, if no BMPs will be implemented, provide justification for not using BMPs for these projects in the annual report;
- v. A plan to address projects that cannot meet 100% of the runoff reduction requirements at their site and must implement alternative approaches, in accordance with the requirements of the MS4 Permit. This shall include:
  - 1. a process for requesting justification for alternative approaches;
  - 2. an inventory of appropriate mitigation projects; and
  - 3. if payment in lieu of projects is submitted, include an inventory



of payments made in the annual report; and

- vi. Implementation of an electronic calendar. The calendar will be updated yearly with tentative dates of activities, as well as regularly with all of the following information:
  - 1. annual review of watershed protection elements;
  - 2. dates of submittal of proposed changes to the watershed protection elements to the Berkeley County Council for review and ratification in applicable ordinances;
  - 3. annual review of implementation, assessment, and enforcement of watershed protection elements;
  - 4. annual review and update of Hot Spots;
  - 5. inspections of all stormwater BMPs; and
  - 6. an annual summary of development and redevelopment projects.

f. The plan for complying with MCM 6 (Pollution Prevention & Good

Housekeeping for Municipal Operations) of the MS4 Permit shall include the following:

- i. A list of all municipal facilities, including wastewater treatment facilities, potable drinking water facilities, municipal fleet operations, maintenance garages, parks and recreation areas, street and infrastructure maintenance operations, and grounds maintenance operations within the Storm Water District's jurisdiction. As part of the list, if a separate entity performs operations that contribute to the completion of activities to meet permit requirements, include those facilities;
- ii. Maintenance procedures for all municipal facilities, to be kept onsite, that help protect physical, chemical, and biological integrity of receiving streams;
- iii. A schedule of no less than once per calendar year for performing inspections at municipal facilities, and procedures for keeping records of inspections;
- iv. A list of policies and procedures the Storm Water District will utilize to reduce the discharge of pollutants in stormwater runoff from all lands owned or maintained by the Storm Water District, in accordance with the requirements of the MS4;

- v. A list of industrial facilities under the Storm Water District's control;
- vi. A list of industrial facilities not covered under another WV/NPDES Permit, with locations of the types of activities and potential pollution sources;
- vii. A benchmark monitoring plan for stormwater discharged from facilities or locations of municipal industrial activities, in accordance with all requirements of the MS4 Permit;
- viii. A list of industrial materials or activities that are asserted as "No Exposure";
- ix. A procedure for collection samples for storm events resulting in a discharge that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previous measurable storm event (greater than 0.1 inch rainfall) in accordance with the requirements of the MS4 Permit; and
- x. Implementation of an electronic calendar. The calendar will be updated yearly with tentative dates of activities, as well as regularly with the dates of inspections of all good housekeeping and maintenance facilities to determine if maintenance standards are being met.

4. The Storm Water District shall submit Annual MS4 Reports to EPA and WVDEP.

The Annual MS4 Report shall meet all reporting requirements of the MS4 Permit. The Storm Water District shall include a section in the Annual MS4 Report describing in detail how the MS4 Manual was implemented during the year covered by the Annual MS4 Report. Each MCM shall have a separate narrative with accompanying documentation. The Annual MS4 Reports required by this Paragraph shall be submitted with one of the semi-annual reports required by Paragraph 71 of the Consent Decree.

## **APPENDIX E**

### **STATE SUPPLEMENTAL ENVIRONMENTAL PROJECT WORK PLAN**

#### **I. Description of State Supplemental Environmental Project**

1. The Sewer District shall perform a West Virginia Supplemental Environmental Project (“State SEP”) wherein the Sewer District will decommission and divert the flow of the White Bush Landing package plant facility, WV/NPDES Permit No. WVG551160 and the Midway Mobile Home Park package plant facility, WV/NPDES Permit No. WVG550856, to the Sewer District’s North Area WWTP, WV/NPDES Permit No. WV0082759, for ultimate treatment and discharge in accordance with the requirements herein.

2. The White Bush Landing package plant facility has a design flow of 11,200 gallons per day (“GPD”) and is a private wastewater treatment facility serving the White Bush Landing Subdivision in Berkeley County, West Virginia. This facility is neither under the control of the Sewer District nor statutorily required to be under the control of the Sewer District. Based on a review of publicly available information, this facility regularly operates in noncompliance with the West Virginia Water Pollution Control Act and its accompanying regulations.

3. The Midway Mobile Home Park package plant facility has a design flow of 23,000 GPD and is a private wastewater treatment facility serving residents of the Midway Mobile Home Park in Berkeley County, West Virginia. This facility is neither under the control of the Sewer District nor statutorily required to be under the control of the Sewer District. Based on a review of publicly available information, this facility regularly operates in noncompliance with the West Virginia Water Pollution Control Act and its accompanying regulations.

4. By diverting flow to the Sewer District’s North Area WWTP and decommissioning these facilities, the Sewer District will be alleviating an environmental risk to

both the residents of the State of West Virginia and the environment. The Sewer District's North Area WWTP has the capacity to accept this additional flow and to ensure proper treatment of this wastewater before discharge into waters of the State of West Virginia.

## **II. State SEP Costs**

5. The cost to decommission and divert the flow from the White Bush Landing package plant facility to the Sewer District's North Area WWTP is estimated to be \$357,000.

6. The cost to decommission and divert the flow from the Midway Mobile Home Park package plant facility to the Sewer District's North Area WWTP is estimated to be \$788,000.

7. Eligible State SEP costs are only the costs of performing design, permitting, construction, demolition, remediation, and/or restoration work either by Sewer District employees or private contractors. The Sewer District may use its own employees to perform such design, permitting, construction, demolition, remediation, and/or restoration work, including associated administrative and incidental costs, provided that such work is not work that otherwise would have been performed by Sewer District's employees in their normal course of employment. Any such work must be supported by time and expense records, which are subject to review by WVDEP.

8. The Sewer District shall not use any federal government or state government funds, grants, or contracts in development or implementation of the State SEP.

## **III. State SEP Implementation**

9. Within six months of the Effective Date, the Sewer District shall begin the project to decommission and divert the flow from the White Bush Landing package plant to the Sewer District's North Area WWTP in accordance with the following schedule:

- a. Complete planning and design within 7 months of the effective date.
- b. Complete necessary permitting within 9 months of the effective date.
- c. Complete bidding and negotiations within 10 months of the effective date.
- d. Substantial completion of construction necessary for the decommissioning

and diversion of flow from the White Bush Landing package plant to the Sewer District's North Area WWTP within 22 months of the effective date.

- e. Final "in-service" within 23 months of the effective date.

f. Decommissioning of the White Bush Landing package plant in accordance with the requirements of W. Va. Code R. § 64-9-3.6 within 30 months of the effective date.

10. Within six months of the Effective Date, the Sewer District shall begin the project to decommission and divert the flow from the Midway Mobile Home Park package plant to the Sewer District's North Area WWTP in accordance with the following schedule:

- a. Complete planning and design within 9 months of the effective date.
- b. Complete necessary permitting within 11 months of the effective date.
- c. Complete bidding and negotiations within 12 months of the effective date.
- d. Substantial completion of construction necessary for the decommissioning

and diversion of flow from the Midway Mobile Home Park package plant to the Sewer District's North Area WWTP within 19 months of the effective date.

- e. Final "in-service" within 20 months of the effective date.

f. Decommissioning of the Midway Mobile Home Park package plant in accordance with the requirements of W. Va. Code R. § 64-9-3.6 within 26 months of the effective date.

#### **IV. State SEP Recordkeeping and Reporting**

11. The Sewer District shall maintain records of all work performed and an accurate accounting of all costs expended to perform the SEP, whether the work is performed by the Sewer District or by contractors.

12. During design, permitting, construction, demolition, remediation, and/or restoration, the Sewer District shall submit State SEP progress reports to WVDEP in accordance with the reporting requirements of Paragraph 71 of the Consent Decree. The State SEP progress reports shall include a description of all State SEP work performed, photographs of the State SEP site, and a summary of costs expended.

13. The Sewer District shall submit to WVDEP a State SEP Completion Report within 90 Days of completion of the State SEP. The State SEP Completion Report shall include:

- a. A detailed description of the State SEP implemented;
- b. A description of any problems encountered in completing the State SEP and the solutions thereto;
- c. An itemized list of all eligible SEP costs expended;
- d. Certification that the SEP has been fully implemented pursuant to the provisions of Section VII (State Supplemental Environmental Project) and Appendix E of the Consent Decree; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP.

**APPENDIX F**

**GANTT CHART OF CONSENT DECREE DEADLINE**





