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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA and COMMONWEALTH OF VIRGINIA, Plaintiffs, v. HAMPTON ROADS SANITATION DISTRICT, Defendant.	Civil Action No. 2:09-cv-481 AMENDED CONSENT DECREE

TABLE OF CONTENTS

I. JURISDICTION AND VENUE ..... -3-

II. APPLICABILITY ..... -4-

III. OBJECTIVES ..... -5-

IV. DEFINITIONS ..... -6-

V. COMPLIANCE REQUIREMENTS ..... -16-

VI. FLOW, PRESSURE AND RAINFALL MONITORING PROGRAM ..... -17-

VII. REGIONAL HYDRAULIC MODEL AND HYDRAULIC ASSESSMENT ..... -21-

VIII. CONDITION ASSESSMENT PLAN ..... -23-

IX. INTERIM SYSTEM IMPROVEMENTS ..... -25-

X. MANAGEMENT, OPERATION AND MAINTENANCE PROGRAM ..... -26-

XI. REGIONAL WET WEATHER MANAGEMENT PLAN ..... -32-

XII. SHORT TERM WET WEATHER OPERATIONAL PLAN ..... -39-

XIII. SSO EMERGENCY RESPONSE PLAN ..... -41-

XIV. COORDINATION WITH LOCALITIES ..... -43-

XV. PUBLIC PARTICIPATION ..... -44-

XVI. POST-RWWMP IMPLEMENTATION MONITORING AND PERFORMANCE ASSESSMENT ..... -45-

XVII. REPORTING REQUIREMENTS ..... -47-

XVIII. SUBMISSIONS REQUIRING AGENCY APPROVAL ..... -53-

XIX . CIVIL PENALTY ..... -55-

XX. STIPULATED PENALTIES ..... -57-

XXI. FORCE MAJEURE ..... -69-

XXII. DISPUTE RESOLUTION ..... -73-

XXIII. INFORMATION COLLECTION AND RETENTION ..... -77-

XXIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS ..... -79-

XXV. COSTS ..... -81-

XXVI NOTICES ..... -82-

XXVII. EFFECTIVE DATE ..... -83-

XXVIII. RETENTION OF JURISDICTION ..... -84-

XXIX. MODIFICATION ..... -84-

XXX. TERMINATION ..... -85-

XXXI. PUBLIC PARTICIPATION ..... -86-

XXXII. SIGNATORIES/SERVICE ..... -87-

XXXIII. INTEGRATION ..... -87-

XXXIV. FINAL JUDGMENT ..... -88-

XXXV. APPENDICES ..... -88-

WHEREAS, the Hampton Roads Sanitation District ("HRSD"), a political subdivision of the Commonwealth of Virginia, owns and operates the HRSD Sanitary Sewer System and the nine Sewage Treatment Plants included in this matter ("STPs") and accepts and treats sewage from the cities of Chesapeake, Hampton, Newport News, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; the counties of Gloucester, Isle of Wight, James City, and York; and the town of Smithfield ("the Localities"), as well as Norfolk;

WHEREAS, HRSD serves a geographic area of 3,100 square miles and a population of approximately 1.6 million, operates 13 STPs, of which nine are included in this matter, owns and operates over 500 miles of interceptor pipes, with a combined treatment capacity of 231 million gallons of wastewater per day;

WHEREAS, the geographic area served by HRSD is also served collectively by the Localities, who collect sewage in their own Sanitary Sewer Systems and send it to the HRSD Sanitary Sewer System for conveyance to STPs owned and operated by HRSD;

WHEREAS, both HRSD and the Localities experience unpermitted discharges of raw sewage and other wastes from their sewer systems. These discharges may occur to the Atlantic Ocean, the Chesapeake Bay, tributaries of the Chesapeake Bay, the James and Elizabeth Rivers, and to other waters of the United States, in violation of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. ("CWA" or "Act");

WHEREAS, HRSD and the Localities experience sewer overflows during both dry and wet weather periods. HRSD and the Localities are addressing and will continue to address dry weather overflows through various measures.

WHEREAS, to address wet weather/capacity-related overflows, HRSD and the Localities and the Virginia State Water Control Board have entered into a Special Order by Consent ("Virginia SWCB Order") to cooperatively address the wet weather overflows experienced in the Regional Sanitary Sewer System. The Virginia SWCB Order provides detailed standards to assess the Regional Sanitary Sewer System. HRSD intends to make best efforts to coordinate the work that HRSD commits to perform pursuant to this Consent Decree with the work being performed by the Localities and HRSD under the Virginia SWCB Order.

WHEREAS, HRSD and the Localities will develop jointly the Regional Wet Weather Management Plan ("RWWMP") that this Consent Decree requires of HRSD and that the Virginia SWCB Order requires of HRSD and the Localities.

WHEREAS, as part of the regional initiative reflected in this Consent Decree and the Virginia SWCB Order, HRSD and the Localities have entered into a Memorandum of Agreement, dated June 28, 2007 (MOA). Among other things, the MOA defines the roles, responsibilities, and obligations of the parties to the MOA, and establishes a dispute resolution process designed to resolve quickly any disputes that might arise between and among the parties to the MOA. The Plaintiffs expect that, if necessary, HRSD will diligently exercise its rights under the MOA to secure any assistance needed from the Localities in order to fulfill its obligations under this Consent Decree.

WHEREAS, this Consent Decree provides that HRSD, together with the Localities, shall develop a schedule that among other things requires implementation of the measures to be performed under the RWWMP as expeditiously as possible.

WHEREAS, Plaintiffs United States and Commonwealth of Virginia have filed a complaint in this matter against HRSD alleging that the unpermitted discharges of sewage violate Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and the State Water Control Law ("SWCL") Section 62.1-44.5 and seeking injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319 and SWCL Sections 62.1-44.23 and 32.

WHEREAS the United States and the Commonwealth of Virginia (the "State") are Co-Plaintiff in this Consent Decree;

WHEREAS, HRSD by entering into this settlement does not admit liability in this matter;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, will avoid litigation among the Parties, and is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, and without adjudication of any issue of fact or law, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

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

Decree, HRSD consents to the Court's jurisdiction over this Decree and any such action and over HRSD and consents to venue in this judicial district.

2. For purposes of this Consent Decree, HRSD agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 301(a) and 309 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1319. HRSD waives any and all objections it might have to the Court's jurisdiction to enter and enforce this Consent Decree.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon (1) the United States and the State; and (2) HRSD and any successors, assigns, and agents, including (i) HRSD contractors with any responsibility for implementing this Consent Decree and (ii) any other representatives that HRSD designates to act on its behalf in implementing this Consent Decree.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve HRSD of its obligation to ensure that the terms of the Decree are implemented. At least 30 days prior to such transfer, HRSD shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the State, EPA Region III, the United States Attorney for the Eastern District of Virginia, and the United States Department of Justice, in accordance with Section XXVI of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. HRSD shall ensure that each contractor hired to implement any portion of the Consent Decree, which is defined to include any plans attached to or incorporated into the Consent Decree, receives all information concerning the Consent Decree requirements necessary for timely and satisfactory performance of that portion of the work. HRSD shall not assert as a defense or excuse for non-compliance that a contractor hired to implement any portion of the Consent Decree was not aware of the requirements and obligations of the Consent Decree.

6. In any action to enforce this Consent Decree, HRSD shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree, unless HRSD demonstrates a valid Force Majeure event pursuant to Section XXI (Force Majeure).

III. OBJECTIVES

7. The express purpose of the Parties entering into this Consent Decree is for HRSD, working in coordination with the Localities, to fulfill the objectives of the Clean Water Act and to achieve full compliance with the Act, the regulations promulgated thereunder, the Virginia State Water Control Law, and the National Pollutant Discharge Elimination System ("NPDES") Permits issued with respect to its nine STPs with the goal of eliminating all Sanitary Sewer Overflows ("SSOs") from the HRSD SS System, all capacity-related SSOs from the Specified Portions of the Regional SS System, and Prohibited Bypasses and any other unpermitted or unauthorized discharges from the Sewage Treatment Plants. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree, and under any amendment

to this Consent Decree, shall have the objective of ensuring that HRSD complies with the foregoing purposes, goals and objectives.

IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall 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 shall apply:

"Adequate Capacity" shall mean that capacity needed to collect and convey, within Operating Pressures defined in the RWWMP, peak hourly wet weather flows, without capacity-related SSOs or Backups, and to treat such flows without capacity-related Bypasses, Prohibited Bypasses, unauthorized discharges, and/or overloading at the STP for the alternative(s) and at the Level of Service selected in the Regional Wet Weather Management Plan pursuant to Section XI.C of this Decree.

"Backups" or "Building/Private Property Backups" shall mean Sanitary System Overflows in the form of wastewater releases or backups into a building or onto private property that is caused by blockages, flow conditions, or other malfunctions in the Regional Sanitary Sewer System. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a Private Lateral is not a Backup or Building/Private Property Backup for purposes of this Decree.

"Bypass" shall mean the intentional diversion of waste streams from any portion of a treatment facility, as defined by 40 C.F.R. § 122.41(m).

"Complaint" shall mean the complaint filed by the United States and the Commonwealth of Virginia in this action.

"Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto and listed in Section XXXV below. It shall also include any approved reports or other plans submitted and approved pursuant to Section XVIII (Submissions Requiring Agencies' Approval) which shall be incorporated by reference hereto.

"Construction Start" shall mean the Notice of Award date for the construction contract associated with each major project or project grouping.

"Construction Completion" shall mean that a major project or project grouping is fully operational and capable of functioning for its intended purpose.

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

"Design Start" shall mean the award by HRSD of an engineering agreement or amendment for Final Design of the major project or project grouping.

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

"Effective Date" shall have the definition provided in Section XXVII.

"Force Main" shall mean any pipe that receives and conveys, under pressure,

wastewater from the discharge side of a pump. A Force Main is intended to convey wastewater under pressure.

"FPR Monitoring" shall mean Flow, Pressure, and Rainfall Monitoring and Reporting System, which is the system set forth in Section VI (Flow Monitoring Program) of this Consent Decree.

"Gravity Line" shall mean a sewer pipe that receives, contains and conveys wastewater in which flow is not normally under pressure, but rather is intended to flow unassisted under the influence of gravity. Gravity sewers are typically not intended to flow full under normal operating conditions.

"Hampton Roads Sanitation District" or "HRSD" shall mean the political subdivision of the Commonwealth of Virginia that provides sewage collection, conveyance, and treatment services for the communities in the Hampton Roads service area.

"HRSD SS System" or "HRSD Sanitary Sewer System" shall mean the wastewater collection and transmission systems, including all pipes, Force Mains, Gravity Sewer Lines, lift stations, Pumping Stations, Pressure Reducing Stations, manholes, and any other appurtenances thereto, which are owned or operated by HRSD as of the Effective Date of this Consent Decree, and which serve the Localities and Norfolk, Virginia. It does not include the portions of the sewer system that serves the Middle Peninsula communities within King William County, King and Queen County, Middlesex County, and Mathews County.

"Infiltration" as defined by 40 C.F.R. § 35.2005(b)(20) shall mean water other than wastewater that enters a sewer system (including sewer service connections and foundation

drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes.

"Inflow" as defined by 40 C.F.R. § 35.2005(b)(21) shall mean water other than wastewater that enters a sewer system (including sewer service connections) 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, cooling towers, storm water, surface runoff, street wash waters, or drainage.

"I/I" shall mean the total quantity of water entering the system from Infiltration and Inflow without distinguishing the source.

"Level of Service" shall mean the peak hourly sewer flow that the Specified Portions of the Regional Sanitary Sewer System can convey while maintaining Level of Service Adequate Capacity. As set forth in Section XI (RWWMP), HRSD at a minimum shall calculate the Level of Service for each of the Minimum Peak Flow Scenarios. Level of Service shall be quantified at specific locations throughout the Regional SS System as both a peak hourly flow rate and the predicted recurrence interval (in years) associated with that peak flow rate. For example, "at a given point in the Regional SS System, a peak hourly flow of 27 cubic feet per second is expected to occur no more frequently than once per 5 years."

" Level of Service Adequate Capacity" shall mean that capacity needed to collect and convey, within Operating Pressures in the RWWMP, peak hourly wet weather flows at a specific Level of Service, without capacity-related SSOs or Backups, and to treat such flows

without capacity-related Bypasses, Prohibited Bypasses, unauthorized discharges, and/or overloading at the STP.

"Localities" shall mean the cities of Chesapeake, Hampton, Newport News, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; the counties of Gloucester, Isle of Wight, James City, and York; and the town of Smithfield.

"Locality" shall mean one of the Localities.

"Locality Overflow Point" or "LOP" shall mean those manholes or other structures in the Regional Sanitary Sewer System that are listed in Appendix 1 of this Consent Decree.

"Minimum Peak Flow Scenarios" shall mean those scenarios that, at a minimum, HRSD shall analyze in developing the Regional Wet Weather Management Plan set forth in Section XI (Regional Wet Weather Management Plan), and are:

2-year peak flow recurrence and 2030 population
5-year peak flow recurrence and 2030 population
10-year peak flow recurrence and 2030 population

In each scenario, "peak flow recurrence" means the highest hourly peak flow that is expected to occur within the Regional Sanitary Sewer System once in the time period specified (i.e. 2, 5, or 10 years). HRSD shall determine these peak flows based upon a statistical analysis of long term flow simulations that HRSD will carry out using the Regional Hydraulic Model, as described in the Regional Hydraulic Model Plan, attached as Appendix 3 hereto, and in the RWWMP.

"MOM Program" shall mean the Management, Operations and Maintenance Program addressed by Section X (Management, Operations and Maintenance Program).

"Operating Pressure" shall mean the pressure policy implemented by HRSD, as it may be amended from time to time, that represents the expected head conditions in the HRSD SS System. The current Operating Pressure(s) are specific to each STP and are set forth in the HRSD 2000 Development Plan.

"Paragraph" shall mean a portion of this Decree identified by an arabic numeral.

"Parties" shall mean the United States, the Commonwealth of Virginia, and HRSD.

"Permits" or "NPDES Permits" shall mean the National Pollutant Discharge Elimination System ("NPDES") permits, (a/k/a the Virginia Pollutant Discharge Elimination System Permits), issued to HRSD pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the Sewage Treatment Plants: Numbers VA 0081248 (Atlantic STP); VA 0081230 (Army Base STP); VA 0081264 (Chesapeake-Elizabeth STP); VA 0081281 (Virginia Initiative STP); VA 0081299 (Nansemond STP); VA00081256 (Boat Harbor STP); VA 0081272 (James River STP); VA0081302 (Williamsburg STP); and VA0081311 (York River STP); and any future extended, modified or reissued permits.

"Plaintiffs" shall mean the United States and the Commonwealth of Virginia on behalf of the Virginia Department of Environmental Quality.

"Pressure Reducing Station" or "PRS" shall mean the facilities in the HRSD SS System which receive flow directly from a force main, and serve to reduce pressures in that upstream force main and increase the effective capacity of that force main.

"Private Lateral" shall mean that portion of the collection systems or sanitary sewer systems not owned by HRSD or the Localities, used to convey wastewater from a building or buildings to that portion of the Regional Sanitary Sewer System owned by a Locality or HRSD.

"Prohibited Bypass" shall mean a Bypass within the meaning of 40 C.F.R § 122.41(m)(4).

"Pumping Station" shall mean facilities comprised of pumps which lift wastewater to a higher hydraulic elevation, and PRS, including all related electrical, mechanical, and structural systems necessary to the operation of that pumping station.

"Rainfall Derived Inflow and Infiltration" or "RDII" shall mean the increase in wastewater flow due to the effect of a rainfall event on the sanitary sewer system. RDII is a parameter that can be measured, estimated, or derived through other means, such as flow monitoring data and/or computer modeling.

"Regional Hydraulic Model" shall mean the computer model for the Specified Portions of the Regional Sanitary Sewer System that HRSD will develop pursuant to Section VII (Regional Hydraulic Model and Hydraulic Assessment) of this Decree and Appendix 3 (Regional Hydraulic Model Plan).

"Regional Sanitary Sewer System" or "Regional SS System" shall mean all of the wastewater collection and transmission systems, including all pipes, Force Mains, Gravity Lines, Pumping Stations, Pressure Reducing Stations, manholes and appurtenances thereto, which are owned or operated by the Localities as well as the HRSD SS System. Regional SS System

therefore refers to all portions of the individual Locality and HRSD collection and transmission systems and appurtenances thereto. Flows from Norfolk into the HRSD System also are included in the Regional Sewer System, so that any modeling of HRSD SS System flows or capacity assessment under this Consent Decree will take such anticipated flows into account, but Norfolk's sanitary sewer system is not included as part of the Regional SS System. Sewer laterals from buildings are not considered part of the Regional Sanitary Sewer System.

"Regional Wet Weather Management Plan" or "RWWMP" shall mean the plan developed pursuant to Section XI (Regional Wet Weather Management Plan) of this Consent Decree and Section D.3 of the Virginia SWCB Order, in which the Localities and HRSD will develop a regional solution to attain Adequate Capacity in the Specified Portions of the Regional SS System and STPs and address wet weather-related SSOs, Backups, Bypasses, Prohibited Bypasses, and unauthorized discharges, from the Regional Sanitary Sewer System and STPs.

"Sanitary Sewer Overflow" or "SSO" shall mean an overflow, spill, diversion, or release of wastewater from or caused by the Regional SS System. This term shall include: (i) discharges to waters of the State or United States from the Regional SS System and (ii) any release of wastewater from the Regional SS System to public or private property that does not reach waters of the United States or the State, including Building/Private Property Backups.

"Sanitary Sewer Discharge" or "SSD" shall mean any discharge to waters of the State or the United States from the HRSD SS System through a point source not authorized in any Permit.

"SCADA system" shall mean a supervisory control and data acquisition computer system for remote monitoring of Pump Stations and Pressure Reducing Stations and for gathering and analyzing real time data.

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

"SSES" shall mean a Sewer System Evaluation Survey, which is a systematic examination of a sanitary sewer system or portion thereof to, at a minimum: (i) assess the condition of sewers, manholes, pump stations and associated appurtenances, (ii) identify I/I sources, locations, and associated extraneous flow rates, (iii) characterize the wastewater flow; and (iv) determine technically feasible and cost-effective approaches of rehabilitation.

"Sewage Treatment Plant" or "STP" shall mean a sewage treatment plant operated by HRSD and all components of such sewage treatment plant. The STPs in this action are the Atlantic STP, the Army Base STP, the Chesapeake-Elizabeth STP, the Virginia Initiative STP, the Nansemond STP, the Boat Harbor STP, the James River STP, the Williamsburg STP, and the York River STP.

"Specified Portions of the Regional SS System" shall mean the following components of the Regional SS System:

(A) All HRSD Force Mains and Gravity Lines, HRSD Pumping Stations, and HRSD Pressure Reducing Stations, and any other components of the HRSD SS System;

(B) Locality Pumping Stations that directly discharge into an HRSD interceptor sewer;

(C) The sewers extending one manhole upstream from each Locality Pumping Station that directly discharges to a HRSD interceptor sewer. Where a Pumping Station receives discharge from multiple sewers, the first upstream manhole on each sewer will be included;

(D) Locality gravity sewers extending one manhole upstream from the point of connection with an HRSD gravity interceptor;

(E) Any and all LOPs identified in Appendix 1;

(F) For modeling purposes and for inclusion and analysis in the RWWMP, those portions of the Regional SS System from the LOPs downstream to the HRSD System.

"State" shall mean the Commonwealth of Virginia.

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

"VADEQ" or "DEQ" shall mean the Virginia Department of Environmental Quality.

"Virginia SWCB Order" shall mean the Special Order on Consent issued on September 26, 2007, by the State Water Control Board to HRSD and to the Localities.

V. COMPLIANCE REQUIREMENTS

9. Overview. To further the objectives of this Consent Decree, HRSD shall perform the measures set forth in VI through XVI, below. HRSD, in consultation and coordination with the Localities, shall implement the approved plans that are attached in the Appendices to this Consent Decree, including requirements pertaining to data collection, development of an integrated Regional Hydraulic Model, and development of a Regional Wet Weather Management Plan, which it shall submit for approval pursuant to Section XVIII of this Consent Decree. HRSD shall perform the other requirements of this Consent Decree and implement those components of the Regional Wet Weather Management Plan that pertain to the HRSD SS System and STPs with the goal of eliminating all SSOs from the HRSD SS System, all capacity-related SSOs from the Specified Portions of the Regional SS System, and Prohibited Bypasses and any other unpermitted or unauthorized discharges from the Sewage Treatment Plants. However, nothing in this Consent Decree relates to peak flow operation of tertiary nutrient removal technologies that may be installed at HRSD's treatment plants.

10. HRSD, in fulfilling the obligations set forth in this Consent Decree, shall consult and coordinate with the Localities. HRSD shall identify standardized formats and data requirements for the Localities to use in providing necessary information to HRSD and take other measures with respect to the Localities as set forth in the attached plans and this Consent Decree.

11. In the event of a conflict between this Consent Decree and any plan appended hereto or submitted pursuant to its terms, this Consent Decree shall control.

VI. FLOW, PRESSURE AND RAINFALL MONITORING PROGRAM

A. Flow, Pressure and Rainfall Monitoring and Reporting System (FPR Monitoring Plan)

12. FPR Monitoring Plan. Plaintiffs have reviewed and preliminarily approved the FPR Monitoring Plan, subject to public comment as required in Section XXXI. Upon entry of this Consent Decree, EPA and VADEQ approve HRSD's FPR Monitoring Plan. The FPR Monitoring Plan is attached as Appendix 2 along with an electronic link to the full Plan. HRSD shall post the approved plan at www.HRSD.com through the date of termination of this Consent Decree. The approved FPR Monitoring Plan is incorporated by reference into, and enforceable as part of, this Consent Decree.

13. As soon as possible, but no later than 15 days from entry of this Consent Decree, HRSD shall submit to Plaintiffs for review and approval a Quality Assurance Program Plan ("QAPP") which shall address:

a. Metering location selection and acceptability criteria;

b. Rain gauge, flow meter and pressure meter calibration and installation;

c. Meter and gauge in-place calibration checks and maintenance activities;

d. Detailed descriptions of both automated and manual data review and QA procedures. It is anticipated that these procedures will include:

(1) Automated data screening that will identify and "flag" potentially atypical data based on site-specific accumulated data history, comparative multi-site evaluations and/or flow balances;

(2) A logical and thorough evaluation of "flagged" data by qualified personnel to determine whether the flagged data is valid, invalid, or should be otherwise qualified;

(3) Appropriate "spot" checks of the effectiveness of the automated data review process;

(4) Appropriate and thorough documentation of the entire data review and validation process and evaluation and resolution of flagged data sets.

e. Measures to be taken to address problems such as insufficient rainfall, instrument failures, inappropriate monitoring locations, and the need to "qualify" specific data.

14. The QAPP shall include appropriate data quality objectives, including the following:

a. The collection of reliable flow metering and pressure data sets for use in the development, calibration and verification of the Regional Hydraulic Model, such that the Regional Hydraulic Model is fit for the uses required by this document, including the Regional Hydraulic Model Plan attached at Appendix 3.

b. For each flow and/or pressure meter, at least 75% reliable data, during each monthly monitoring period;

c. For all pressure meters in the aggregate, at least 90% reliable data, based on the duration of system response to all rainfall events used for calibration or verification of the Regional Hydraulic Model of 1 inch total rainfall or greater, during the one year monitoring period; and

d. For all flow meters in the aggregate, at least 90% reliable data, based on the duration of system response to all rainfall events used for calibration or verification of the Regional Hydraulic Model of 1 inch total rainfall or greater, during the one year monitoring period.

B. Implementation of the FPR Monitoring Plan.

15. HRSD shall implement the approved FPR Monitoring Plan pursuant to the approved schedule contained therein, and shall collect pressure, rainfall and flow data for twelve months, unless Plaintiffs, or HRSD in consultation with Plaintiffs, determine the period is so abnormally dry as defined in the FPR Plan that additional data collection is required.

16. In addition to the quarterly briefings that HRSD will provide pursuant to Section XVII, HRSD shall provide an interim report six months after commencing flow monitoring under the FPR Monitoring Plan. Such report shall summarize the first five months of data collection. Plaintiffs reserve the right to request a written report after the quarterly briefings, which HRSD shall provide within 30 days from the date of Plaintiffs' request. Within ninety (90) days of the end of the twelve (12) month period of monitoring, HRSD shall submit to the EPA and VADEQ for review, comment and approval in accordance with Section XVIII (Submissions

Requiring Agency Approval) of this Consent Decree a final report describing its implementation of the approved FPR Monitoring Plan.

17. The interim and the final reports shall provide:

a. Summaries of the data collected at each monitoring location;

b. Descriptions of all substantive deviations from the approved FPR Monitoring Plan, including any changed, deleted or additional monitoring locations;

c. For each monitoring point, a summary of monitoring equipment operational status history (in-service, out-of service, and any operational/accuracy issues) during the monitoring period;

d. For each monitoring point, a summary of the results of data Quality Assurance/Quality Control reviews provided for in the QAPP that shall specifically identify and characterize all data for which quality issues were identified; and

e. A discussion of whether the collected data is sufficient to satisfy all of the requirements of the FPR Monitoring Plan and to achieve its objectives.

18. Until the date that HRSD submits the Final FPR Monitoring Report, if HRSD, after consultation with Plaintiffs, concludes that the data collected are not sufficient in quantity, quality or scope to satisfy the requirements of or to achieve the objectives of the FPR Monitoring Plan or the QAPP, including that the 12-month period has been abnormally dry, then HRSD shall include in the Report and submit for Plaintiffs' approval:

a. A revised plan and schedule for additional proposed monitoring that will achieve those objectives and/or satisfy the requirements as expeditiously as possible; and

b. A description of the anticipated impact the additional flow and rainfall monitoring shall have on the implementation schedule for all other remedial measures required by this Consent Decree.

c. Upon approval by Plaintiffs, HRSD shall implement the approved revised plan and schedule.

C. LOPs Not Included in HRSD Flow Monitoring.

19. In the event that an additional capacity or pressure related SSO occurs prior to the submittal of the Preliminary Capacity Assessment Report at any of the LOPs listed in Appendix 1, HRSD shall consult with the affected Locality to determine the circumstances surrounding the SSO. Information collected by the Locality such as probable cause, estimated volume, response to resolve and any follow-up investigation that is available along with available HRSD information proximate to the LOP will be jointly reviewed by HRSD and the Locality. The purpose of the review shall be to identify the cause and circumstances that led to the SSO.

20. HRSD, in consultation with the Locality, will determine the significance of the volume of the event relative to flows in the Specified Portions of the Regional Sanitary Sewer System and make a determination as to whether the Regional Hydraulic Model adequately characterizes the impact of the SSO volume on regional capacity. HRSD shall give a summary of its review, to include the cause and circumstances that led to the SSO, and the results and explain the basis for its determination with the next Semi-Annual or Annual Report to be submitted after the SSO. In the event that HRSD determines that the volume of the event is

significant and not adequately characterized in the Regional Hydraulic Model, HRSD shall adjust the model to account for the SSO volume.

VII. REGIONAL HYDRAULIC MODEL AND HYDRAULIC ASSESSMENT

A. Regional Hydraulic Model Plan:

21. Plaintiffs have reviewed and preliminarily approved the Regional Hydraulic Model ("RHM") Plan, subject to public comment as required in Section XXXI. Upon entry of this Consent Decree, EPA and VADEQ approve HRSD's Regional Hydraulic Model Plan. The Regional Hydraulic Model Plan is attached as Appendix 3. HRSD shall post the approved Regional Hydraulic Model Plan in its entirety at www.HRSD.com through the date of termination of this Consent Decree. The approved Regional Hydraulic Model Plan in its entirety is incorporated by reference into, and enforceable as part of, this Consent Decree.

B. Implementation of the Regional Hydraulic Model Plan.

22. HRSD shall conduct the modeling and implement the approved Regional Hydraulic Model Plan according to the schedule contained therein, and shall develop, calibrate, verify, and use the Regional Hydraulic Model for the purposes set forth in the Regional Hydraulic Model Plan and this Consent Decree.

C. Regional Hydraulic Model Report

23. No later than July 31, 2011, HRSD shall submit to Plaintiffs pursuant to Section XVIII (Submissions Requiring Approval) a Regional Hydraulic Model Report that shall:

a. Identify the portions of the system included in the model;

b. Provide schematic(s) of the model;

c. Provide attribute and input data for the model in tabular summaries;

d. Provide a discussion and summary of model calibration and validation results that includes tables summarizing all calibration parameters' initial and final values, and comparing those values to typical ranges found in the literature;

e. Provide graphical flow, hydraulic grade line and pressure calibration;

f. To the extent the models are integrated, describe how HRSD and the Localities are integrating their models;

g. To the extent the models are not integrated, describe whether and to what extent HRSD believes the models will be compatible; and

h. Any other items identified in the RHM Plan to be included in the RHM Reports.

VIII. CONDITION ASSESSMENT PLAN

A. Approval of Condition Assessment Plan.

24. Plaintiffs have reviewed and preliminarily approved the Condition Assessment Plan, subject to public comment as required in Section XXXI. Upon entry of this Consent Decree, EPA and VADEQ approve HRSD's Condition Assessment Plan ("CAP"). The CAP is attached as Appendix 4. HRSD shall post the approved plan at www.HRSD.com through the date of termination of this Consent Decree. The approved CAP in its entirety is incorporated by reference into, and enforceable as part of, this Consent Decree.

B. Implementation of the CAP.

25. HRSD shall implement the approved CAP pursuant to the approved schedule contained therein.

C. Preliminary Condition Assessment Report.

26. HRSD shall submit a Preliminary Condition Assessment Report to Plaintiffs for review and approval on or before September 23, 2009. The Preliminary CAP Report shall describe the results of the screening and preliminary risk assessment for force mains, gravity pipes, pumping stations, pressure reducing stations and SCADA that HRSD conducted in accordance with the approved CAP, including a listing of all facilities that were screened and whether any presented a material risk of failure. The Preliminary Condition Assessment Report shall list those assets that will be subject to further field inspection and identify a schedule by which HRSD will complete such field inspections. The preliminary report shall describe the process and methodology for determining what constitutes a material risk of failure for major components in the HRSD SS System, including but not limited to:

a. Pumping Stations;

b. Pressure Reducing Stations;

c. Gravity Lines;

d. Force Mains; and

e. The SCADA System.

D. Final Condition Assessment Report.

27. Based on the results of the field inspections and further evaluation of the assets identified in the Preliminary Condition Assessment Report as presenting a material risk of

failure, HRSD shall submit to Plaintiffs for review and approval a Final Condition Assessment Report consistent with the schedule in the approved CAP. The Final Condition Assessment Report shall summarize the results of the field inspections and other evaluations, and include action plans for addressing and correcting and/or mitigating any portion of the HRSD SS System that was identified as having a material risk of failure in the CAP, including appropriate schedules and milestones. As set forth in the CAP, this shall include action plans for addressing any Pump Station or Pressure Reducing Station identified in the CAP as having a material susceptibility to damage from flooding based upon HRSD flooding records.

28. Upon approval of the Final Condition Assessment Report by Plaintiffs, HRSD shall implement the action plans contained therein according to the approved schedules in the Final Condition Assessment Report.

IX. INTERIM SYSTEM IMPROVEMENTS

29. HRSD shall complete the infrastructure renewal and improvement projects in the HRSD SS System listed in Appendix 5 to this Consent Decree to address past or potential SSOs no later than 8 years from entry of this Consent Decree. Projects shall be completed in accordance with HRSD's Capital Improvement Program (CIP) policies and practices, which include review by licensed professional engineers and HRSD Commission approval of contracts.

30. The Parties appreciate that further technical and engineering analysis may result in a change in scope of a project. If a project is reduced in scope by 20 per cent or more, HRSD shall notify Plaintiffs and explain the basis for the reduction in scope. For example, a change in

scope may involve reduction in the length of force main to be replaced or repaired; reduction in the pumping capacity of a pump station; or similar technical changes.

31. If HRSD wishes to remove a project from the list of projects on Appendix 5, or to substitute another project comparable in scope and cost, it shall submit a request for such change to Plaintiffs along with justification for the change. Plaintiffs may approve or disapprove the request and their response shall be in writing. In the event Plaintiffs approve HRSD's request, the change to Appendix 5 shall not be subject to public comment or Court approval.

32. HRSD shall provide Plaintiffs with written certification of the completion of each project or group of projects, in the Semi-Annual and Annual Reports required in Section XVII.

X. MANAGEMENT, OPERATIONS, AND MAINTENANCE PROGRAM

33. No later than 120 days from entry of this Consent Decree, HRSD shall submit to Plaintiffs for review and approval a Management, Operations and Maintenance (MOM) Plan that documents HRSD's MOM program. HRSD's MOM shall be consistent with EPA Region IV guidance for CMOMs, including as appropriate the *Guide for Evaluating Capacity, Management, Operation and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems*, see http://www.epa.gov/region4/water/wpeb/momproject/ . The MOM Plan shall identify specific activities that HRSD will undertake to responsibly and effectively manage, operate and maintain the HRSD SS System and to implement a preventative system of maintenance and inspection. The MOM Plan shall, at a minimum, identify and describe the following:

a. Major goals of HRSD's MOM program;

b. Administrative and maintenance positions responsible for implementing the activities in the MOM program, including lines of authority by organization chart;

c. Resources allocated to each of the various MOM program elements (i.e., number of positions/FTEs, equipment where appropriate, etc.);

d. HRSD's legal authority and plans to:

(1) Control infiltration and connections from inflow sources within the HRSD system;

(2) Require that sewers and connections to the HRSD SS System be properly designed and constructed;

(3) Ensure proper installation, testing, and inspection of new and rehabilitated sewers within the HRSD SS System; and

(4) Implement the general and specific prohibitions of the national pretreatment program under 40 CFR 403.5;

e. Any agreements or understandings with the Localities regarding the flows to be conveyed to and accepted by the HRSD SS System;

f. Preventative and corrective maintenance programs for HRSD's Pumping Stations, gravity mains including manholes, and force mains and associated air release valves, pressure control valves, and main line isolation valves, including:

(1) A schedule for inspection frequency and an outline of the contents of such inspections for the following asset classes: Pumping Stations, gravity mains

including manholes, and force mains and associated air release valves, pressure control valves, and main line isolation valves;

(2) Appropriate maintenance programs for each asset class, at a frequency which may be based on the information and findings concerning the condition of the assets obtained in the inspections, or at set intervals;

(3) Specific quantitative maintenance performance measures (i.e., feet of line inspected per year, pump station preventative maintenance performed per year etc.) for each asset as set forth in more detail in Paragraph 34 below;

(4) "criticality" (i.e. the seriousness of the consequences of failure, such as the impact on public health or the environment, disruption or difficulty in addressing the failure, and similar concerns) may be a factor in both the inspection frequency and the maintenance program;

g. Regular condition assessments of HRSD's critical assets as identified in the MOM Plan, including force mains, gravity mains, and Pumping Stations. With respect to force mains, such assessment shall include (i) development of an ongoing program to investigate and improve force main assessment techniques, to include periodic surveys of new technologies and implementation of those techniques which are reliable and cost-effective; and (ii) procedures to carry out force main assessments on an opportunistic basis when repairing force mains, making connections to force mains, etc.; and (iii) review, on an annual basis, of all force main failures from that year to identify any patterns indicating potential risk of failure, and (iv) development of a database of information regarding force main pipe condition data from other

sources, such as when a pipe is tapped or replaced, to identify trends or patterns indicating increased risk of failure.

h. For those force mains inspected as part of the Condition Assessment Plan in Section VIII, but found not to present a material risk of failure such that action would be required under that Section VIII, an inspection and maintenance program based upon the findings and information concerning the condition of such force mains obtained during the condition assessment previously performed;

i. Measures to achieve a goal of continuous Pumping Station operation, in accordance with Virginia Sewage Collection and Treatment ("SCAT") Regulations, including consideration of portable and permanent on-site back-up generators with automatic transfer switches;

j. Evaluation of the site-specific adequacy of dual feed power at Pumping Stations with a history of dual feed power failures;

k. HRSD's asset inventory (in the form of a GIS system) with the location of existing infrastructure and facilities, including force mains, gravity mains, Pumping Stations, pressure control valves, air release valves, isolation valves, onsite/portable generators, and associated appurtenances;

l. HRSD's asset management database(s), which are being implemented in a phased manner and will be used to plan, schedule, and track asset maintenance, rehabilitation and replacement. For each system component, the asset management database should include (i) applicable asset attribute data (i.e. horsepower, hz, diameter, etc. where available), maintenance

history, physical condition (updated timely as appropriate to the asset), and schedule of inspection and maintenance activities; and (ii) an investment plan based upon estimated service lives for critical asset classes to assist in planning and prioritizing investment in the HRSD SS System. Such investment plan will be used as a guide and will be adjusted from time to time to reflect condition data, system performance and financial constraints. Improvements from the RWWMP may supersede investments where the schedules conflict;

m. Process and tools for managing equipment and replacement parts inventories, including identification of critical replacement parts;

n. HRSD training programs to ensure that all HRSD personnel are qualified to perform their duties;

o. HRSD's engineering design criteria for construction of new facilities, including

(1) Requirements and standards for the installation of new sewers, pumps and other appurtenances, and rehabilitation and repair projects. Such standards should consider opportunities to increase the operational flexibility of the HRSD SS System to facilitate inspection and repair; and

(2) Procedures and specifications for inspecting and testing the installation of new sewers, pumps, and other appurtenances and for rehabilitation and repair projects;

p. Audits and performance evaluations of HRSD's MOM program at intervals of approximately three years, with an initial audit and evaluation one year after

approval of the RWWMP and every three years thereafter, to evaluate any changes and/or deficiencies in the MOM program and steps to respond to them. Revisions, as appropriate, will be made as the results of the audit and evaluation and other circumstances indicate; and

q. A summary of HRSD's Collection System Release Response Plan, submitted pursuant to Section XIII of this Decree, including a reference to where the full plan is located and can be viewed.

34. Quantitative Performance Measures: The Parties agree that the MOM to be submitted pursuant to this Section shall contain the following objective, quantitative performance measures of inspection and maintenance activities, which shall be subject to stipulated penalties pursuant to Section XX, Paragraph 115.b:

a. Gravity Sewer main inspected, 39,600 linear feet per year;

b. Air release valves preventative maintenance, performed on 1,550 per year;

c. Gravity sewer cleaning, 26,400 linear feet per year;

d. Pumping Stations annual preventative maintenance, to be performed on 81 stations per year;

e. Back-up generators annual preventative maintenance, to be performed on 55 permanent backup generators per year; and

f. Non-invasive force main inspection for pipes within 500 feet of a drinking water supply reservoir, 2400 linear feet per year.

35. Updates or revisions to the MOM may include evaluation and modification (as necessary) of quantitative performance measures. Throughout the life of the MOM program,

HRSD shall maintain a meaningful set of enforceable quantitative performance measures for at least the assets identified in Paragraph 34 above. Performance measures may be added, deleted and/or modified if such revision results in a better assessment of the performance and effectiveness of the MOM program.

36. HRSD shall continue to implement its current MOM Program until the submitted MOM is approved.

37. Within 60 days of receipt of Plaintiffs' comments on HRSD's MOM program, HRSD shall modify the Program consistent with Section XVIII (Submissions Requiring Agency Approval) and resubmit the modified MOM Plan to Plaintiffs.

38. HRSD shall implement its MOM Program as approved by the Plaintiffs. HRSD may undertake updates or revisions to its MOM Program, including to the performance measures above, consistent with EPA Region IV guidance pertaining to MOMs for SSO systems, as appropriate, and with industry standards to manage, operate, and maintain sewer systems properly. HRSD shall provide a summary of such changes to Plaintiffs in its Annual Report.

XI. REGIONAL WET WEATHER MANAGEMENT PLAN

A. Preliminary Capacity Assessment Report.

39. On or before July 31, 2012, HRSD shall submit a Preliminary Capacity Assessment Report for Plaintiff's review and comment. In the Preliminary Capacity Assessment Report, HRSD, in consultation with the Localities, shall describe the method and extent of its assessment, and its preliminary findings concerning the capacity of the existing HRSD SS System, the STPs, and the Specified Portion of the Regional SS System to convey within current

Operating Pressures and to treat flow at the rates determined in the Minimum Peak Flow Scenarios and any other scenarios modeled by HRSD. The final determinations concerning capacity and measures to attain Adequate Capacity will be determined in the RWWMP.

B. Submission of Regional Wet Weather Management Plan.

40. As soon as practicable, but no later than November 26, 2013, unless further extended by agreement of the Parties as set forth in Section XXIX (Modifications), HRSD, in consultation with the Localities, shall develop and submit for EPA and VADEQ review and approval pursuant to Section XVIII (Submission for Review and Approval), a Regional Wet Weather Management Plan ("RWWMP") with specific measures and schedules that, when implemented, will result in Adequate Capacity in the STPs and the Specified Portions of the Regional SS System. At a minimum, the STPs must be able to accommodate, without Prohibited Bypasses or unauthorized discharges, the peak hourly flow received by the STP. The scope of review and approval of the RWWMP, and any limitations on Plaintiffs' review and approval of the Localities' obligations set forth in the RWWMP, is set forth in Subsection E below.

41. Alternatives Analysis. HRSD in the RWWMP, in consultation with the Localities, shall model and analyze a variety of peak flows, including without limitation each Minimum Peak Flow Scenario (and any other appropriate scenarios). HRSD shall ascertain for each peak flow the Level of Service required to attain Level of Service Adequate Capacity throughout the Regional SS System and the STPs. HRSD also shall analyze and develop, in consultation with the Localities, the alternatives needed to attain Level of Service Adequate Capacity within the current Operating Pressure conditions established with each Locality or

through agreement with the Locality on modified pressure condition terms. The Operating Pressures established to obtain the selected Level of Service shall be specifically identified in the RWWMP.

42. The analyzed alternatives shall consider approaches such as removal of RDII, providing additional hydraulic capacity to convey and treat peak flows, storage options, and operational schemes. HRSD and/or one or more Localities may use these approaches alone and/or in combination. The life cycle costs, feasibility of construction, operations and maintenance impacts, water quality benefits, and other relevant factors shall be described in the RWWMP.

43. The RWWMP analysis of alternatives shall describe in detail the measures to be performed to achieve the specified Level of Service and shall identify HRSD or the Locality that will perform them.

44. HRSD, together with the Localities, shall weigh the protectiveness and cost of the alternatives. Thus, HRSD and the Locality may select measures to be implemented by one or more Localities within the Localities' individual sanitary sewer systems in lieu of measures to be implemented by HRSD. Conversely, HRSD and the Localities may select measures to be implemented by HRSD in lieu of control measures to be implemented by the Localities.

C. RWWMP Selected Alternative.

45. In the RWWMP, HRSD, in consultation with the Localities, shall compare and evaluate the alternatives to attain each Level of Service and select a final approach that optimizes the performance of the Specified Portions of the Regional SS System and the STPs in attaining

Adequate Capacity considering the following factors: (a) impact on the number and volume of SSOs, Prohibited Bypasses and unauthorized discharges at the STPs; (b) prioritization of projects protective of human health and/or the environment; (c) engineering and technical capabilities and limits; (d) costs; and (e) other relevant factors. The RWWMP shall set forth the justification for the selection of the Level of Service and the specific alternatives that are selected.

46. The selected alternatives shall include:

a. All STP upgrades and repair measures necessary to achieve STP compliance with all Permit limitations and requirements, to provide capacity to attain Level of Service, and to eliminate any Bypasses due to a lack of capacity or unauthorized discharges at the STPs;

b. Specific remedial measures to address any capacity limitations in the HRSD SS System, which may include capacity increases in, or new construction of, Pumping Station, PRS, Force Mains, Gravity Lines, or other components in the HRSD SS System, construction of storage or equalization basin facilities, improvements to Force Mains, Gravity Lines, and interceptors, increases in STP capacity, or other appropriate measures;

c. Operating Pressures as set forth in the selected alternative(s).

d. Measures to be implemented in the Locality SS Systems to address capacity-related SSOs;

e. Measures to be implemented to remove sources of I/I to alleviate capacity constraints; and

f. Any other information contained in the RWWMP to be submitted to the VADEQ pursuant to the Virginia SWCB Order.

47. The anticipated general format of the RWWMP is set forth in Appendix 6 as a guideline for its development.

48. The RWWMP shall clearly designate which projects or undertakings, if any, each Locality is responsible to implement or perform and which projects or undertakings HRSD is responsible to implement or perform.

49. The RWWMP shall include a Post-RWWMP Implementation Monitoring, Performance, and Assessment Plan as set forth in Section XVI.

50. Schedule: HRSD, in consultation with the Localities, shall develop a schedule for implementation of the RWWMP to be included in the RWWMP.

a. The RWWMP shall contain specific schedules for each of the identified major measures including interim milestones for Design Start, Construction Start and Construction Completion. The RWWMP shall prioritize the remedial measures in the RWWMP based upon: (i) reduction in the potential for human health and/or environmental impacts; (ii) likely reduction of the number and volume of capacity-related SSOs, either in the Localities' system or the HRSD SS System, and the number and volume of Prohibited Bypasses, capacity-related Bypasses, or unauthorized discharges at the STPs; (iii) the amount of capacity increased; (iv) logistics dictated by engineering, construction, and operational requirements; and (v) similar factors.

b. HRSD shall provide in the RWWMP that all work and actions allocated to HRSD be completed as expeditiously as possible.

D. Coordination with Plaintiffs During RWWMP Development.

51. Quarterly Briefings. As set forth in Paragraph 90, upon entry of the Consent Decree, HRSD shall arrange quarterly briefings of the Plaintiffs concerning progress on development of the RWWMP. Such briefings may be telephonic or in person in the Tidewater area at the election of Plaintiffs, and, as appropriate, shall include discussion of:

a. The regional data collection efforts pursuant to the requirements of Section VI of this Decree (FPR Plan) and the Virginia SWCB Order;

b. The Regional Hydraulic Model development pursuant to this Decree and the Virginia SWCB Order;

c. Preliminary assessment of HRSD capacity;

d. Preliminary consideration and/or elimination of alternatives to address peak flows throughout the Regional SS System and STPs;

e. Status of progress and any problems concerning integration of the HRSD and Localities' data collection and modeling efforts; and

f. Such other topics as are appropriate to provide an on-going understanding of the status of development of the RWWMP.

Plaintiffs reserve the right to request a written report after the quarterly briefings, which HRSD shall provide within 30 days from the date of Plaintiffs' request.

52. HRSD shall consult with Plaintiffs and the Localities as appropriate in selecting the dates and arranging the briefings. HRSD shall invite representatives of the Localities to the open portions of such briefings.

53. Written Reports. In addition, HRSD shall report on the status of the RWWMP in the written reports as required pursuant to Section XVII (Reporting).

E. Review and Approval of the RWWMP and Reservation of Claims as to the Localities..

54. In the event Plaintiffs do not find the RWWMP, including the schedule, suitable for approval, they will provide comments to HRSD as set forth in Section XVIII (Review and Approval of Agency Submissions). Any dispute concerning the RWWMP, including the schedule, will be resolved pursuant to Section XXII (Dispute Resolution Procedures).

55. HRSD shall submit to Plaintiffs all portions of the RWWMP, including those containing information concerning the Localities' SS Systems and the Localities' obligations to perform or implement specific measures. Measures identified in the RWWMP to be implemented in the Localities' SS Systems are not requirements of this Consent Decree. The Localities are not parties to this Consent Decree and accordingly Plaintiffs may not bring a claim against a Locality pursuant to this Consent Decree with HRSD.

56. If (i) a Locality does not appropriately participate in RWWMP development to the detriment of identifying regional capacity solutions, or (ii) a Locality fails to comply with the RWWMP after approval of the RWWMP and the noncompliance materially and adversely affects capacity in the Regional SS System or HRSD's ability to complete its projects expeditiously, HRSD shall take action pursuant to the Memorandum of Agreement or other legal remedies to address the Locality's failure.

57. Nothing in this Section or this Consent Decree in any way constitutes a waiver or release of any claims the United States may have as to any Locality and all such claims are expressly reserved.

F. Implementation of the RWWMP.

58. Upon its approval by Plaintiffs, the portions of the approved RWWMP that pertain to work or actions that HRSD must perform, and the associated milestones and schedules, shall be incorporated by reference into, and enforceable as part of, this Consent Decree. The Parties in their discretion may amend this Consent Decree to add the requirements and obligations applicable to HRSD in lieu of incorporation by reference.

59. As set forth in Section XVIII (Submissions for Agency Approvals), HRSD shall implement the portions of the approved RWWMP that pertain to work or actions that HRSD must perform according to the schedule and other requirements in the approved RWWMP.

XII. SHORT TERM WET WEATHER OPERATIONAL PLAN

A. Submission of Short Term Wet Weather Operational Plan.

60. HRSD previously submitted a Short Term Wet Weather Operational Plan to EPA. Plaintiffs shall approve, disapprove or comment on the Plan pursuant to Section XVIII (Submission for Agency Approval). If warranted by Plaintiffs' comments, HRSD shall resubmit the Plan within 180 days of Plaintiff's comments, as provided in that Section. Upon approval of the Short Term Wet Weather Operational Plan, HRSD shall implement the Plan.

61. The Short Term Wet Weather Operational Plan shall describe measures to optimize the performance of its existing Sanitary Sewer System and Sewage Treatment Plants during wet weather in order to avoid or reduce capacity-related SSOs in the HRSD and Regional

SS System and capacity-related Bypasses and unauthorized discharges at the STPs until such time as the RWWMP is implemented.

62. The Short Term Wet Weather Operational Plan shall describe HRSD's approach, in consultation with the Localities, to:

a. Evaluate and develop wet weather procedures (1) that maximize conveyance of flows throughout the existing HRSD SS System and transmission of such flows to the STPs and (2) that reduce SSOs in the Regional Sewer System to the maximum extent feasible;

b. Determine the degree to which such procedures are being implemented at the present time;

c. Devise measures to improve wet weather procedures and to implement the optimal wet weather procedures for the existing HRSD SS System and STPs.

63. HRSD shall analyze pursuant to the Short Term Wet Weather Operational Plan:

a. Operating procedures for the existing Pump Stations and strategies to accept wet weather flows from the Localities to the maximum extent feasible;

b. Operating procedures and strategies at the STPs to maximize treatment of wet weather flows consistent with effluent limits and the conditions of HRSD's Permits;

c. Pressure protocols and procedures and the impact of alternative strategies on SSO reduction in the Regional SS System; and

d. The balancing and transmission of flows throughout the existing HRSD SS System during wet weather events.

64. The Short Term Wet Weather Operational Plan also shall address optimal methods to respond to small, intense storms and wet weather that contribute high flows only to a portion of the Regional SS System or to a single or few Localities, as well as optimal methods to respond to large, system-wide wet weather events or storms.

65. Upon approval by Plaintiffs, HRSD shall implement the Short Term Wet Weather Operational Plan.

B. Short Term Wet Weather Operational Reporting.

66. HRSD, in consultation with the Localities, shall include in each Annual Report submitted pursuant to Section XVII (Reporting Requirements) a summary of the work performed to implement the Short Term Wet Weather Operational Plan and HRSD's findings and conclusions concerning optimization of the HRSD SS System and STPs.

XIII. SSO EMERGENCY RESPONSE PLAN

67. HRSD has provided Plaintiffs for review and comment HRSD's current SSO Emergency Response Plan (also known as HRSD's Collection System Release Plan). Plaintiffs will review the Plan to evaluate whether it provides the following information:

a. An explanation as to whether and how HRSD addresses SSOs that occur in the Localities' SS Systems that are attributable to failures or problems in the HRSD SS System, including but not limited to Force Main failures, Pump Station outages or failures, or Pressure Reducing Station outages or failures; and

b. A description of HRSD's procedures for maintaining records of SSO response actions.

c. A detailed description of its operating procedures for reporting and maintaining records of SSOs, and pressures for the HRSD SS System.

68. HRSD shall maintain a copy of any written reports prepared pursuant to its internal procedures for responding to SSOs in accordance with Section XXIII (Information Collection and Retention).

69. Plaintiffs shall comment on the draft Plan and, within 60 days of receipt of Plaintiffs' comments on the SSO Emergency Response Plan, HRSD shall modify the Plan accordingly and shall implement the modified Plan.

70. Upon approval by Plaintiffs, HRSD shall post the approved plan at www.HRSD.com. HRSD shall maintain the current approved version of the SSO Emergency Response Plan on that webpage through the date of termination of this Consent Decree.

71. HRSD shall review the SSO Emergency Response Plan on an annual basis and update such plan as necessary. Each such update shall be subject to Plaintiffs' approval as set forth in Section XVIII. Upon Plaintiffs' approval, the updated SSO Emergency Response Plan shall be incorporated by reference into, and enforceable as part of, this Consent Decree.

72. During the effective period of this Consent Decree, HRSD shall follow its SSO Emergency Response Plan.

XIV. COORDINATION WITH LOCALITIES

A. Information that HRSD has obtained from the Localities.

73. HRSD has obtained and will continue to obtain information from the Localities and Norfolk that is necessary to develop the Regional Hydraulic Model and the RWWMP.

74. Information HRSD is to Seek from Localities. HRSD shall request from each of the Localities, or obtain from VADEQ, and consider in developing its RWWMP if relevant to such plan, the following information, which the Localities are developing as part of their work on the RWWMP:

a. Sewer System Evaluation Survey ("SSES");

b. Flow Evaluation Reports;

c. Condition Assessment Documentation; and

d. Rehabilitation Plans.

75. Information HRSD is to Provide to Localities. HRSD shall also make the following information available to the Localities electronically within sixty (60) days of the date that it is finalized or received and verified by HRSD:

a. All flow, pressure, and rainfall monitoring data that has been screened by HRSD using the quality control and quality assurance procedures approved by Plaintiffs pursuant to the Consent Decree;

b. Flow monitoring reports prepared pursuant to Section VI (Flow Monitoring Program);

c. A schematic map or GIS map which is updated annually showing the locations of all capacity-related SSOs in the HRSD SS System since August 2007, and those portions of the Localities' systems that are included in the Regional Hydraulic Model;

d. Summaries of the Regional Hydraulic Model results used to characterize the HRSD SS System and the portions of the Regional SS System from the Locality Overflow Points;

e. The Six Month and Annual progress reports submitted to Plaintiffs pursuant to Section XVII (Reporting Requirements); and

f. Any other items that HRSD needs to provide to the Localities in order for HRSD to fulfill the requirements of this Decree.

76. HRSD shall advise Plaintiffs promptly if there are any issues, impediments, or problems concerning coordination between the Localities and HRSD.

XV. PUBLIC PARTICIPATION

77. Informational Newsletters and Meetings. After the Effective Date, HRSD shall, on an annual basis, produce and distribute informational newsletters to each of the Localities and to any persons or organizations requesting such information. In lieu of publishing some or all of its own newsletters, HRSD may provide this information through newsletters published by third parties.

78. On at least an annual basis, beginning with the first calendar year following Entry of the decree, HRSD, after providing reasonable notice on its webpage and in a newspaper of

general circulation to the public, shall hold an annual informational meeting open to the Localities and the public.

79. In the newsletters and meetings, HRSD shall convey information on the status of the RWWMP, HRSD-Locality cooperation, and steps that citizens within the Localities may take to protect the receiving waters.

80. Public Outreach Regarding Overflows. HRSD shall implement a public educational outreach program to inform the public of the location of any SSO Outfalls within the Regional SS System, the possible health and environmental effects of SSOs, and that recreational activities, such as swimming, should be limited as a result of such SSOs.

XVI. POST-RWWMP IMPLEMENTATION MONITORING AND PERFORMANCE ASSESSMENT

81. HRSD, in consultation with the Localities, shall conduct a Performance Assessment of the work performed pursuant to Section XI (Regional Wet Weather Management Plan) to determine the effectiveness of the evaluation and corrective action work performed.

82. HRSD shall submit for Plaintiffs' approval pursuant to Section XVIII a plan for the Performance Assessment as part of the RWWMP. The Performance Assessment may be phased as appropriate to evaluate phases of the work as it is completed.

83. The Performance Assessment shall, at a minimum,

a. Evaluate the number and causes of SSOs that occur on an annual basis in the HRSD SS System;

b. Evaluate the number and causes of Prohibited Bypasses, capacity-related Bypasses, overloading, and unauthorized discharges that occur on an annual basis in the STPs;

c. In consultation with the Localities, evaluate the number and causes of wet weather/capacity SSOs that occur on an annual basis in the Specified Portions of the Regional SS System;

d. Quantify, through modeling and/or metering, whether each Locality is meeting its forecasts of total flow entering into the Specified Portions of the Regional SS System and whether pressures in the HRSD SS System are meeting the Operating Pressures;

e. Summarize the results of pressure monitoring in the HRSD SS System and identify all hourly averages exceedances of the Operating Pressure(s) in the RWWMP for conditions up to the selected Level of Service. For all such exceedances, identify the minimum and maximum pressures that occurred during each such hour.

f. Identify all capacity-related SSOs from the "Specified Portions of the Regional SS System." For the period of time during which capacity-related SSOs occurred, provide sufficient pressure data from the nearest upstream and downstream pressure monitoring locations to ascertain whether or not HRSD pressures exceeded the Operating Pressure during the SSO.

g. Summarize flow and pressure monitoring data and correlate it to peak flow events;

h. Evaluate whether the remedial measures in the HRSD portions of the system and STPs have resulted in attaining Adequate Capacity for the selected Level of Service within Operating Pressures as set forth in the RWWMP;

i. Evaluate and discuss any other parameters relevant to assessment of the work performed under the RWWMP.

84. The Performance Assessment Plan shall set forth a schedule for such activities and assessment.

85. HRSD shall submit a Performance Assessment Report summarizing the Performance Assessment or phases thereof to Plaintiffs as it is completed, pursuant to Section XVIII (Submissions for Agency Approval.) In the event of any dispute concerning the Performance Assessment, the provisions of Section XXII (Dispute Resolution) shall apply.

86. In the event that the Performance Assessment Report shows that the work performed in accordance with the RWWMP did not result in Adequate Capacity for the selected Level of Service, and other performance standards set forth in the RWWMP, then HRSD shall submit to the Plaintiffs a proposed course of action and proposed schedule pursuant to Section XVIII (Submissions for Agency Approval) and shall modify its Regional Wet Weather Management Plan to attain Adequate Capacity. In the event of any dispute as to the appropriate course of action, the provisions of Section XXII (Dispute Resolution) shall apply.

XVII. REPORTING REQUIREMENTS

A. Annual Reports.

87. On or before each November 1 following the Effective Date of this decree, HRSD shall submit in writing to Plaintiffs a status report for the preceding period from July 1 through June 30. The status report shall contain a summary of the status and progress of all projects and

programs required by Sections V through XVI (Compliance Program) of this Decree, including, but not limited to:

a. Activities undertaken pursuant to Sections V through XVI (Compliance Program). HRSD shall state in the report when projects required by the Consent Decree, and by the Plans and Appendices incorporated into the Consent Decree, have been completed satisfactorily, and the report shall be certified as set forth in Subsection C below. For capital projects in excess of $1,000,000, HRSD also shall provide verification by a Professional Engineer that the project was completed satisfactorily.

b. A summary of any non-compliance with the requirements of the Consent Decree or anticipated delays, and an explanation of the causes of the non-compliance or delay and measures to correct them.

c. A summary of tasks performed under the Condition Assessment Procedures in Section VIII, including miles of gravity pipe, miles of force mains and number of Pump Stations and SCADA systems inspected and similar summary information; and, when applicable, corrective action taken to address facilities or HRSD SS System components that presented a material risk of failure.

d. Compliance with the MOM performance measures specified in Paragraph 34 and a summary of any revisions or amendments made to the MOM.

e. Modifications or amendments to HRSD Operating Pressure(s).

f. A listing of all unusual or extraordinary discharges from the STPs, including without limitation Bypasses, Prohibited Bypasses, or other overflows, and the location,

description of the STP component from which the discharge occurred, estimated total volume, estimated volume reaching state waters , identification of the receiving water, date and duration, cause, and corrective action, if any, for each.

g. A written report of SSOs from the HRSD SS System which shall contain the following:

(1) Location of the SSO by street address, latitude/longitude, and/or GIS coordinate data;

(2) Identification of the receiving water, if applicable, including overflows to a separate storm sewer, into which the discharge went;

(3) An estimate of the volume (in gallons) of sewage discharged and an estimate of the volume (in gallons) discharged to waters of the State or the United States;

(4) Description of the sewer system component from which the SSO was released;

(5) Cause or suspected cause of the SSO;

(6) Estimated date and time when the overflow began and stopped or the anticipated time the SSO is expected to continue as well as whether any SSO occurred at the same location in the five years prior to the reported SSO;

(7) Steps taken to respond to the SSO; and

(8) Steps taken to reduce, eliminate, and prevent reoccurrence of the SSO and a schedule of major milestones for those steps, if known at the time.

h. HRSD may submit or cause to be submitted to Plaintiffs Sanitary Sewer Overflow Reporting System ("SSORs") reports in the format attached as Appendix 7 to the extent it satisfies the foregoing requirements.

B. Semi-Annual Reports.

88. In addition to the Annual Reports, on or before each May 1 following the Effective Date of this decree, HRSD shall submit in writing to Plaintiffs a status report for the preceding reporting period (July 1 through December 31). The status report shall contain the following information:

a. A discussion of the cause, significance, and response to any capacity related SSO that occurred in the Specified Portions of the Region SS System and any unusual or extraordinary discharges from the STPs, including without limitation Bypasses, Prohibited Bypasses, or other overflows. The specific details about each such event shall be available to the Plaintiffs through SSORS or otherwise;

b. A listing of all major compliance deadlines or milestones that were met;

c. A summary of tasks performed under the Condition Assessment Procedures in Section VIII, including miles of gravity pipe, force mains and number of pump stations inspected and similar summary information; and, when applicable, corrective action taken to address facilities or HRSD SS System components that presented a material risk of failure.

d. Identification of any compliance deadlines or milestones that were not met with an explanation of why they were not met, what action is being taken to address the failure and the expected date by which the required action will be completed;

e. A discussion of any foreseeable issues relating to upcoming compliance deadlines or milestones that may cause the deadlines/milestone to be missed and planned actions taken to minimize any delays or to prevent the deadlines from being missed;

f. Discussions of any significant issues that have arisen that may warrant either now or in the future modification of any requirement in the Consent Decree; and

g. Identification of changes in key personnel directly responsible for compliance activities.

C. Monthly SSO Reporting.

89. EPA and VADEQ have been granted access to the SSORS (SSO Reporting System) database maintained by the Hampton Roads Planning District Commission for the Localities, Norfolk and HRSD. Accordingly, HRSD is not required under this Consent Decree to provide monthly SSO Reports to Plaintiffs, provided that Plaintiffs continue to have access to SSORS and that the format and content of the SSORS reports remains unchanged as set forth in Appendix 7 hereto. In the event that Plaintiffs do not have continued access, or the SSORS format changes to remove information currently required without the consent of both Plaintiffs, HRSD shall submit to EPA on the 15th day of each month thereafter a report for all SSOs that occurred in the HRSD SS System during the prior month containing the information listed in Paragraph 87, subpart g. of this Section (information on SSOs for Annual Reports).

D. Quarterly Briefings.

90. HRSD shall provide quarterly briefings of the Plaintiffs as set forth in Section XI (Regional Wet Weather Management Plan) from the date of lodging of this Consent Decree through submission of the RWWMP to Plaintiffs pursuant to Section XVIII (Submission for Agency Approval) for any calendar quarter in which the Annual or Six-Month Reports are not due. (i.e., on February 1 and August 1 of each year). These briefings may either be telephonic or face to face meetings held in the Tidewater Region of Virginia and Plaintiffs shall decide how they will participate in each quarterly briefing. Plaintiffs reserve the right to request a written report after the quarterly briefings, which HRSD shall provide within 30 days from the date of Plaintiffs' request.

91. HRSD shall maintain a copy of any written reports prepared pursuant to this Section in accordance with Section XXIII (Information Collection and Retention), below.

92. Information provided pursuant to this Consent Decree may be used by the Plaintiffs in any proceeding to enforce this Consent Decree or the Act. HRSD shall not object to the authenticity for purposes of admission into evidence of any report, plan, or other submission prepared in accordance with this Paragraph or the information contained in said reports in any proceeding to enforce this Consent Decree.

E. Certification.

93. All reports required to be submitted in this Section shall contain a certification signed by the HRSD General Manager or Special Assistant for Compliance Assurance. This responsibility may be delegated with Plaintiffs' approval. The certification shall read as follows:

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

94. HRSD shall maintain copies of all written submissions prepared pursuant to this Section for five years.

XVIII. SUBMISSIONS REQUIRING AGENCY APPROVAL

A. EPA and State Review:

95. After receipt and review of any plan, program or other document which is required to be submitted for approval pursuant to this Consent Decree, EPA and VADEQ may (1) approve the submission; (2) approve the submission or portions of the submission upon specified conditions; (3) approve part of the submission and disapprove the remainder; or (4) disapprove the submission and direct HRSSD to modify the submission.

B. HRSD's Obligations upon EPA and State approval:

96. In the event of approval of the complete submission, HRSD shall proceed to take any actions required by the plan, program or other approved document, as approved in writing by EPA and VADEQ.

97. In the event of written approval of portions of the submission or approval upon specified conditions, HRSD shall proceed to take the actions identified in the approved portion of the plan, program, other document, or portion thereof, in accordance with any applicable conditions specified by EPA and VADEQ, subject only to HRSD's right to invoke the Dispute

Resolution procedures set forth in Section XXII of this Consent Decree with respect to the conditions imposed or the disapproved portions. Implementation of any approved portion of the submission shall not eliminate the potential of HRSD to incur stipulated penalties pursuant to Section XX.

98. HRSD may challenge a requirement to proceed with an approved portion of a submittal only to the extent it can show that such portion is dependent upon an unapproved portion of the submittal, or upon a part of the submittal which has been approved upon condition(s) that are in dispute. The burden is on HRSD to demonstrate that it cannot proceed independently to implement the approved portions pending resolution of the dispute or approval of the unapproved portion.

99. If HRSD timely submits an item for review and approval and Plaintiffs issue a decision regarding the submittal more than 120 days after the date the item was submitted, and that failure is not due to the incompleteness of HRSD's submittal, HRSD shall be entitled to an extension of time for each subsequent affected obligation equal to the amount of time that Plaintiffs' responses exceed the 120 day period from the date of the submittal.

C. **HRSD's obligations upon EPA and State disapproval:**

100. Upon receipt of a notice of disapproval of all or part of a submission from EPA and VADEQ, HRSD shall correct the deficiencies as directed by EPA's and VADEQ's written comments within 120 days, unless Plaintiffs specify a longer period, and resubmit the plan, program or other document for approval. Any stipulated penalties applicable to the original

submission, as set forth in Section XX, shall accrue during the 120-day period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part.

D. Procedures for Resubmitted Plans:

101. In the event that a resubmitted plan, program or other document, or portion thereof, is disapproved by EPA and VADEQ, EPA and VADEQ may again require HRSD to correct the deficiencies in accord with this Section, subject to HRSD 's right to invoke the Dispute Resolution Procedures set forth in Section XXII of this Consent Decree and the right of EPA and VADEQ to seek stipulated penalties as provided in this Section.

102. All plans, reports, and other items required to be submitted to EPA and the State under this Consent Decree shall, upon approval by EPA and the State, be incorporated into and enforceable under this Consent Decree. In the event EPA and the State approve a portion of a plan, report or other item required to be submitted to EPA and the State under this Consent Decree, the approved portion shall be enforceable under this Consent Decree.

XIX. CIVIL PENALTY

103. Within 30 Days after the Effective Date of this Consent Decree, HRSD shall pay the sum of $ 900,000.00 (nine hundred thousand dollars) as a civil penalty. HRSD shall pay 50% of the penalty to the United States and 50% of the penalty to the State pursuant to the procedures set forth below.

104. In the event that full payment is not made within thirty (30) days after entry of this Consent Decree, HRSD shall pay interest on the balance due at the rate provided in 28 U.S.C. § 1961.

105. HRSD shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to HRSD, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Virginia, Norfolk Division. At the time of payment, HRSD shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Hampton Roads Sanitation District, and shall reference the civil action number and DOJ case number 90-5-1-1-09125, to the United States in accordance with Section XXVI of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

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

106. HRSD shall not deduct any penalties paid under this Decree pursuant to this Section or Section XX (Stipulated Penalties) in calculating its federal income tax.

107. HRSD shall pay the civil penalty due to the State by check, cashier's check or money order payable to the Treasurer of Virginia and delivered to: Receipts Control, Department of Environmental Quality, Post Office Box 1104, Richmond, Virginia 23218. HRSD shall include its Federal Employer Identification Number (FEIN) with its penalty payment and shall indicate that the payment is being made in accordance with the terms of this Decree for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

XX. STIPULATED PENALTIES

108. HRSD shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section XXI (Force Majeure). A violation includes failing to perform satisfactorily 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.

109. Late Payment of Civil Penalty

If HRSD fails to pay the civil penalty required to be paid under Section XIX of this Decree (Civil Penalty) when due, HRSD shall pay a stipulated penalty of $ 500 per Day for each Day that the payment is late.

110. HRSD shall be subject to a stipulated penalty for each SSD, Prohibited Bypass or unauthorized discharge from the HRSD SS System or the HRSD STPs that occurs after the date of entry of the Consent Decree as follows:

Volume of the SSD or Prohibited Bypass	Penalty from date of entry
Less than 100 gallons	$ 100
100 to 2,499 gallons	$ 750
2,500 to 9,999 gallons	$ 1,250
10,000 to 99,999 gallons	$ 4,700
100,000 to 999,999 gallons	$ 10,000
1 million gallons or greater	$ 15,000

111. FPR Monitoring Plan. HRSD shall pay the following penalty per day for failing to comply with its obligations concerning flow, pressure and rainfall monitoring set forth in Section VI and the FPR Monitoring Plan.

a. Failure to initiate flow, pressure, and/or rainfall data collection after March 15, 2010, as set forth in the FPR Monitoring Plan and this Consent Decree:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$1,500
After 60 days	$2,250

b. Failure to complete 12 months of monitoring or as set forth in the FPR Monitoring Plan and this Consent Decree:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$1,500
After 60 days	$2,250

c. Failure to submit to Plaintiffs when due the flow monitoring reports as set forth in the Consent Decree and FPR Monitoring Plan:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$1,500
After 60 days	$2,000

d. Failure to perform the analysis of LOPs in Paragraphs 19 and 20:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$1,500
After 60 days	$2,250

e. Failure to comply with any other requirements of Section VI of the Consent Decree (FPR Monitoring) or FPR Monitoring Plan:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$ 500
31st to 60th day	$1,000
After 60 days	$1,500

112. Regional Hydraulic Modeling. HRSD shall pay the following penalty per day for failing to comply with its obligations concerning the Regional Hydraulic Model, as set forth in Section VII of this Consent Decree and the Regional Hydraulic Model Plan, as follows:

a. Failure to submit to Plaintiffs the Report on the initial calibration, based on five months of data, or the Final Model Report, as required by the RHM Plan and Section VII (RHM) of this Consent Decree:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$2,000
After 60 days	$3,000

b. Failure to implement any other requirements of the Regional Hydraulic Model Plan or Section VII of this Consent Decree as set forth therein:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$ 500
31st to 60th day	$1,000
After 60 days	$2,000

113. Condition Assessment. HRSD shall pay the following penalty per day for failing to comply with its obligations concerning the Condition Assessment Plan, as set forth in Section VIII of this Consent Decree and the Condition Assessment Plan, as follows:

a. Failure to submit to Plaintiffs a Preliminary Condition Assessment Report satisfying the requirements of Section VIII, Paragraph 26 and the CAP on or before the deadlines established in the CAP and this Consent Decree:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$2,000
After 60 days	$3,000

b. Failure to submit to Plaintiffs the Final Condition Assessment Report satisfying the requirements of Section VIII, Paragraph 27 and the CAP on or before the deadlines established in the CAP and this Consent Decree:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000

31st to 60th day	$2,000
After 60 days	$3,000

c. Failure to implement satisfactorily the corrective actions and other measures identified in the Final Condition Assessment Report approved by Plaintiffs pursuant to the schedules contained therein:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$2,000
After 60 days	$3,000

d. Failure to comply with any other requirements of Section VIII of this Decree, the CAP or Preliminary Assessment Report or Final Condition Assessment Report:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$ 500
31st to 60th day	$1,000
After 60 days	$2,000

114. Capital Improvement Program Projects. HRSD shall pay the following penalty per day for failing to comply with its obligations concerning the projects listed in Section IX (Interim System Improvements) of this Consent Decree and Appendix 5, as follows:

a. Failure to complete the projects set forth in Appendix 5 on or before eight years from entry of this Consent Decree:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$2,000
After 60 days	$3,000

115. MOM Program. HRSD shall pay the following penalty per day for failing to comply with Section X of this Consent Decree, as follows:

a. Failure to timely submit a MOM program as required by Section X:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$2,000
After 60 days	$3,000

b. Failure to meet the performance standards set forth in Paragraph 34 of this Consent Decree (objective and quantifiable standards from MOM) and revisions thereto:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$2,000
After 60 days	$3,000

116. Regional Wet Weather Management Plan. HRSD shall pay the following penalty per day for failing to comply with its obligations concerning the RWWMP as set forth in Section XI of this Consent Decree, as follows:

a. Failure to submit timely to Plaintiffs the Preliminary Capacity Assessment Report containing the information required in Section XI, Paragraph 39:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$2,000
After 60 days	$3,000

b. Failure to submit timely to Plaintiffs the RWWMP containing the information and analysis set forth in Section XI, Paragraphs 40 through 50, and Appendix 6:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,500
31st to 60th day	$3,000
After 60 days	$5,000

117. Other Plans required in this Consent Decree. HRSD shall pay the following stipulated penalty per day for failing to comply with the requirements of this Consent Decree concerning the Short Term Wet Weather Operational Plan and the SSO Emergency Response Plan:

a. Failure to resubmit timely such Plans to Plaintiffs:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$1,500
After 60 days	$2,000

b. Failure to comply with the provisions of such Plans:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$1,500
After 60 days	$2,000

118. Implementation of the Measures in the RWWMP for which HRSD is Responsible. HRSD shall pay the following penalty per day for failing to comply with its obligations to implement those projects selected in the RWWMP which are designated to be the responsibility of HRSD, pursuant to the approved schedule, as set forth in Section XI of this Consent Decree and the approved RWWMP:

a. Failure to meet interim milestones of Design Start and Construction Start:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$1,500
After 60 days	$3,000

b. Failure to meet final milestones for Construction Completion:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,500
31st to 60th day	$3,000
After 60 days	$5,000

119. Reporting and Briefing. HRSD shall pay the following penalty per day for failing to satisfy its obligations to submit reports and to brief the Plaintiffs set forth in Section XVII:

a. Failure to provide quarterly briefings to Plaintiffs:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$2,000
After 60 days	$3,000

b. Failure to submit Six-Month and Annual Reports containing the information required in Section XVII:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$2,000
After 60 days	$3,000

c. Failure to submit the Monthly Report regarding SSOs in the event such reports are required due to a loss of EPA access or a change in SSORS format as set forth in Paragraph 89:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$ 100
31st to 60th day	$ 500
After 60 days	$ 750

120. Performance Assessment. HRSD shall pay the following penalty per day for failing to submit timely a Performance Assessment Report and/or a proposed course of action and RWWMP modification in compliance with the requirements of Section XVI:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$1,000
31st to 60th day	$2,000
After 60 days	$3,000

121. Other Consent Decree Requirements. For any other requirements of this Consent Decree not addressed above, HRSD shall pay the following penalty:

a. Failure to submit a report, briefing, assessment and similar provision of information to Plaintiffs:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$ 500
31st to 60th day	$ 750
After 60 days	$ 1,000

b. Failure to perform, execute, implement, or carry out any corrective action measure or action item contained in a plan or report:

Period of Non-Compliance	Penalty per Day of Violation
1st to 30th day	$ 500
31st to 60th day	$1,000
After 60 days	$2,000

122. 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.

123. HRSD shall pay stipulated penalties to the United States and the State within sixty Days of a written demand by either Plaintiff. HRSD shall pay 50% percent of the total stipulated penalty amount due to the United States and 50% percent 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.

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

125. Stipulated penalties shall continue to accrue as provided in this Section during any Dispute Resolution, except for the following:

a. In the event the District Court takes longer than 180 days to resolve the dispute, HRSD shall be liable only for 180 days of accrued stipulated penalties at the foregoing rates; and

b. In the event the Court of Appeals takes longer than 270 days to resolve the dispute, HRSD shall be liable only for 270 days of accrued stipulated penalties at the foregoing rates.

126. Stipulated penalties shall accrue as set forth in this Section, but need not be paid until the following:

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

b. If the dispute is appealed to the Court and Plaintiffs prevail in whole or in part, HRSD 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, HRSD shall pay all accrued penalties determined to be owing, together with interest, within 30 Days of receiving the final appellate court decision.

127. HRSD shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Section XIX (Civil Penalty) for payments to the United States, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. HRSD shall pay stipulated penalties owing to the State in the manner set forth in Section XIX (Civil Penalty) for

payments to the State, and shall identify the violations for which the stipulated penalties are being paid.

128. If HRSD fails to pay stipulated penalties according to the terms of this Consent Decree, HRSD 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 HRSD's failure to pay any stipulated penalties.

129. Subject to the provisions of Section XXIV of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for HRSD's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), HRSD shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

XXI. FORCE MAJEURE

130. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of HRSD, of any entity controlled by HRSD, or of HRSD's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite HRSD's (or entities' it controls or its contractors') best efforts to fulfill the obligation. The requirement that HRSD exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the

effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include HRSD's financial inability to perform any obligation under this Consent Decree.

131. Where any compliance obligation under this Section requires HRSD to obtain a federal, state, or local permit or approval, HRSD shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. HRSD may seek relief under this Section 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 HRSD has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

132. When (i) development of the RWWMP requires HRSD to rely upon data, modeling or any other information or actions by the Localities required by the Virginia SWCB Order, and any Locality fails to satisfy its obligations under the Virginia SWCB Order, or (ii) after approval of the RWWMP, HRSD is delayed or prevented from meeting milestones in its implementation schedule for the RWWMP solely because a Locality fails to implement certain measures or otherwise to perform as required by the RWWMP and/or the Virginia SWCB Order, HRSD shall take all action available to it to obtain that information or to bring about the necessary compliance from the Locality, including notifying Plaintiffs as soon as practicable of the Locality's failure and pursuing any claims it may have pursuant to the Memorandum of Agreement ("MOA") or any other alternative legal remedies against the non-compliant Locality. If HRSD demonstrates that it took all measures available to it to obtain the information or

otherwise to bring about the Locality's compliance with the Virginia SWCB Order, including notifying Plaintiffs as soon as practicable of the Locality's failure to comply and pursuing any claims against the Locality pursuant to the MOA or any other alternative legal remedies, but the failure of the Locality to comply with the Virginia SWCB Order is the sole cause that HRSD does not meet its obligations, HRSD may seek relief under this Section for its failure to meet its obligation.

133. 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, HRSD shall provide notice in writing to EPA and the State within 15 days of the date when HRSD first knew that the event might cause a delay and shall provide 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; HRSD'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 HRSD, such event may cause or contribute to an endangerment to public health, welfare or the environment. HRSD 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 HRSD 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. HRSD shall be deemed to know of any circumstance of which HRSD, or any entity controlled by HRSD, including its contractors, knew or should have known.

134. If EPA , after a reasonable opportunity for review and comment by the State, 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 a reasonable opportunity for review and comment by the State, 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 HRSD in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

135. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify HRSD in writing of its decision.

136. If HRSD elects to invoke the dispute resolution procedures set forth in Section XXII (Dispute Resolution), it shall do so no later than 15 business days after receipt of EPA's notice. In any such proceeding, HRSD 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 HRSD complied with the requirements of this Section. If HRSD carries this burden, the delay at issue shall be deemed not to be a violation by HRSD of the affected obligation of this Consent Decree identified to EPA and the Court.

XXII. DISPUTE RESOLUTION

137. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve any and all disputes arising under or with respect to this Consent Decree.

138. 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 HRSD (or a Locality intervening under Paragraph 144(a)) sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 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 Plaintiffs shall be considered binding unless, within 60 days after the conclusion of the informal negotiation period, HRSD (or a Locality intervening under Paragraph 144(a)) invokes formal dispute resolution procedures as set forth below.

139. Formal Dispute Resolution. HRSD (or a Locality intervening under Paragraph 144(a)) shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the Plaintiffs 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 HRSD's or the intervening Locality's position and any supporting documentation relied upon by HRSD or the intervening Locality.

140. Plaintiffs shall serve their Statement of Position within 60 Days of receipt of HRSD's and/or the intervening Locality's Statement of Position. Plaintiffs' 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 Plaintiffs. Plaintiffs' Statement of Position shall be binding on HRSD and/or the intervening Locality, unless HRSD and/or the intervening Locality files a motion for judicial review of the dispute in accordance with the following Paragraph.

141. HRSD (or a Locality intervening under Paragraph 144(a)) may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XXVI of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of Plaintiffs' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of HRSD's and/or the intervening Locality'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.

142. Plaintiffs shall respond to HRSD's and/or the intervening Locality's motion within the time period allowed by the Local Rules of this Court. HRSD (or a Locality intervening under Paragraph 144(a)) may file a reply memorandum, to the extent permitted by the Local Rules.

143. <u>Standard of Review</u>

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraphs 139 and 141 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, HRSD (or a Locality intervening under Paragraph 144(a)) shall have the burden of demonstrating, based on the administrative record, that the position of Plaintiffs is arbitrary and capricious or otherwise not in accordance with law.

(1) An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, Plaintiffs may allow submission of supplemental statements of position by the parties to the dispute.

(2) The EPA Region III Director of the Water Division shall issue a final administrative decision based on the administrative record maintained by EPA as set forth above. The decision shall be binding on HRSD (or a Locality intervening under Paragraph 144(a)) , subject to HRSD's and/or the intervening Locality's right to seek judicial review pursuant to the provisions of this Section.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraphs 139 and 141, HRSD (or a Locality intervening under Paragraph 144(a)) shall bear the burden of demonstrating by a preponderance of the evidence that

its position complies with the requirements of this Consent Decree and fulfills its objectives and goals.

c. Disputes Concerning Modification. In disputes concerning whether or not there should be a modification of this Consent Decree HRSD shall have the burden set forth in Section XXIX (Modifications).

144. Limits to Participation by Localities:

a. Amici briefs shall not be allowed in disputes under this Section. No Locality shall be permitted to participate in dispute resolution under this Section, unless all the Parties agree in writing to such participation, or the Locality seeks to intervene and the court grants intervention under the Federal Rules of Civil Procedure.

b. Plaintiffs or HRSD in a de novo proceeding in which Localities have not intervened nonetheless may introduce evidence from Locality witnesses or records where such material is relevant to the dispute before the Court. The Federal Rules of Evidence will govern the admissibility of evidence in such instances. In matters where review is limited to the administrative record, applicable principles of administrative law shall govern whether evidence from Locality witnesses or records may be included.

c. HRSD shall send the Localities and the Hampton Roads Planning District Commission copies of the Notice of Dispute when it initiates informal dispute resolution under this Section.

145. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of HRSD 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 Paragraphs 125 and 126. If HRSD does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XXIII. INFORMATION COLLECTION AND RETENTION

146. The United States, the State, 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 the State in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by HRSD or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess HRSD's compliance with this Consent Decree.

147. Upon request, HRSD shall provide EPA and the State or their authorized representatives splits of any samples taken by HRSD and copies of any photographs. Upon request, EPA and the State shall provide HRSD splits of any samples taken by EPA or the State and copies of any photographs.

148. HRSD shall maintain copies of any reports, plans, permits, and documents submitted to Plaintiffs pursuant to this Consent Decree, including any underlying research and data, for a period of five (5) years from the date of submission. HRSD shall require any contractor implementing any portion of this Consent Decree also to retain such materials for a period of five years from the date of submission. Where a contractor failed to retain such documents, and HRSD can demonstrate that the contractor's missing or destroyed documents contained the same information as documents in the possession of HRSD, HRSD shall not be liable for the contractor's failure to retain such documents. 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, HRSD shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

149. At the conclusion of the information-retention period provided in the preceding Paragraph, HRSD shall notify the United States and the State 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 the State, HRSD shall deliver any such documents, records, or other information to EPA or the State. HRSD 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 HRSD asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or

information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by HRSD. 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.

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

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

XXIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

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

153. The United States and the State reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in the foregoing Paragraph. 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 the foregoing Paragraph. 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, HRSD's SS System or STPs, whether related to the violations addressed in this Consent Decree or otherwise.

154. 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 HRSD's SS System or STPs or its violations, HRSD 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 the first Paragraph of this Section.

155. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. HRSD is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and HRSD's compliance with this Consent Decree shall be no defense to any action commenced by the Plaintiffs pursuant to any such laws, regulations, or permits, except as set forth herein. 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 HRSD's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33U.S.C. § 1251 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

156. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or other delays caused by inadequate facility planning or plans and specifications on the part of HRSD shall not be cause for extension of any required compliance date in this Consent Decree.

157. This Consent Decree does not limit or affect the rights of HRSD 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 HRSD, except as otherwise provided by law.

158. Nothing in this Consent Decree limits the rights or defenses available under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e), in the event that the laws of the State, as currently or hereafter enacted, may prevent HRSD from raising the revenues needed to comply with this Decree

159. 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.

XXV. COSTS

160. 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 HRSD.

XXVI. NOTICES

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

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No.90-5-1-1-09125

To EPA:

Chief
Office of Compliance and Enforcement
Water Protection Division
U.S. Environmental Protection Agency
Ariel Rios Building
12th and Pennsylvania Ave. NW
Washington, DC 20044

Chief
NPDES Branch
Water Protection Division
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Judith Hykel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

To the Commonwealth of Virginia

Executive Director
Virginia Department of Environmental Quality
629 East Main Street
Richmond, VA 23219

Regional Director
Tidewater Regional Office
Department of Environmental Quality
5636 Southern Boulevard
Virginia Beach, VA 23462
Re: United States and the Commonwealth of Virginia v. Hampton Roads Sanitation District

To HRSD:

General Manager
Hampton Roads Sanitation District
P.O. Box 5911
Virginia Beach, VA 23471

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

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

XXVII. EFFECTIVE DATE

164. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is executed by the Court or a motion to enter the Consent Decree is granted, whichever occurs first; provided, however, that HRSD hereby agrees that it 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 be null and void.

XXVIII. RETENTION OF JURISDICTION

165. 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, or effectuating or enforcing compliance with the terms of this Decree.

XXIX. MODIFICATION

166. Except with respect to the date for submission of the RWWMP and Paragraph 31 of the Section IX (Interim System Improvements) 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.

167. Submission of RWWMP: If the Parties so agree, the deadline of November 26, 2013 for submission of the RWWMP may be extended as appropriate, for an amount of time justified by the circumstances, but not later than July 31, 2014, without public comment or Court approval. The Parties shall sign a written stipulation for any such extension to be filed on the court docket.

168. Any disputes concerning modification of this Decree (included modification of any Plans approved and incorporated into the Consent Decree) shall be resolved pursuant to Section XXII of this Decree (Dispute Resolution), provided, however, that, instead of the burden(s) of proof set forth in that Section, 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).

169. In the event that HRSD requests a material modification to the approved Regional Wet Weather Management Plan's selected measures and/or to the schedule, HRSD shall initially consult with the Localities and the Plaintiffs concerning the modification and scope of public comment, if any, prior to submission of a formal request for modification. HRSD shall submit a proposed modification package which shall contain the following:

a. the basis for the modification and supporting justification;

b. any changes to the selected measures and/or schedule in the approved Plan;

c. a demonstration that the proposed changes are consistent with the goals and objectives of this Consent Decree; and

d. a proposed public comment process if one was determined to be appropriate based upon the initial consultation with the Plaintiffs.

170. After public comment, if any was determined to be appropriate, HRSD shall submit its formal request for modification to the Plaintiffs for review and approval pursuant to Section XVIII.

XXX. TERMINATION

171. After HRSD has (1) completed the requirements of Section V through XVI (Compliance Requirements), (2) completed the Performance Assessment, (3) fulfilled the requirements of Section XVI (Performance Assessment), (4) thereafter maintained continuous satisfactory compliance with this Consent Decree for a period of twelve months, (5) complied

with all other requirements of this Consent Decree, and (6) paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, HRSD may serve upon the United States and the State a Request for Termination, stating that HRSD has satisfied those requirements, together with all necessary supporting documentation.

172. Following receipt by the Plaintiffs of HRSD's Request for Termination, the Parties shall confer informally concerning the Request. If the United States, after consultation with the State, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

173. If the United States after consultation with the State does not agree that the Decree may be terminated, HRSD may invoke Dispute Resolution under Section XXII of this Decree. However, HRSD shall not seek Dispute Resolution of any dispute regarding termination, under Section XXII, until 6 months after service of its Request for Termination.

XXXI. PUBLIC PARTICIPATION

174. 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. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. HRSD consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified HRSD in writing that it no longer supports entry of the Decree.

XXXII. SIGNATORIES/SERVICE

175. Each undersigned representative of HRSD and the State and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice 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.

176. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. HRSD agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in 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.

XXXIII. INTEGRATION

177. 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 supercedes 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, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXXIV. FINAL JUDGMENT

178. 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 HRSD. 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.

XXXV. APPENDICES

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

Appendix 1	List of Locality Overflow Points ("LOPs")
Appendix 2	Flow, Pressure, and Rainfall Monitoring Plan Executive Summary
Appendix 3	Regional Hydraulic Model Plan
Appendix 4	Condition Assessment Plan
Appendix 5	List of Interim System Improvements and attached descriptions from HRSD's Capital Improvement Program
Appendix 6	Regional Wet Weather Management Plan general format
Appendix 7	Format of SSORS Reports to be submitted pursuant to Section XVII

Dated and entered this 23 day of Feb., 2010.

/s/

Jerome B. Friedman
UNITED STATES DISTRICT JUDGE
United States District Judge
Eastern District of Virginia

FOR PLAINTIFF UNITED STATES OF AMERICA:

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TABLE OF APPENDICES

1. List of Locality Overflow Points ("LOPs")

2. Flow, Pressure, and Rainfall Monitoring Plan Executive Summary

3. Regional Hydraulic Model Plan

4. Condition Assessment Plan

5. List of Interim System Improvements and attached descriptions from HRSD's Capital Improvement Program

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