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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

THE COMMONWEALTH OF KENTUCKY, Plaintiff, v. THE LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT, Defendant.	)	Civil Action No. 3:08-cv-00608-CRS
UNITED STATES OF AMERICA, Plaintiff-Intervener v. THE LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT, Defendant.	)	

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INTRODUCTION

WHEREAS, the parties to this Amended Consent Decree which amends, supercedes and replaces the original Consent Decree entered in this matter by this Court on August 12, 2005, the Commonwealth of Kentucky by and through its Environmental and Public Protection Cabinet (hereinafter the "Cabinet"), the United States of America, on behalf of the United States Environmental Protection Agency (hereinafter "EPA") and the Louisville and Jefferson County Metropolitan Sewer District (hereinafter "MSD"), state as follows:

1. WHEREAS, the Cabinet is charged with the statutory duty of enforcing Kentucky Revised Statute ("KRS") Chapter 224 and the regulations promulgated pursuant thereto.

2. WHEREAS, EPA is charged with the statutory duty of enforcing the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 ("Clean Water Act" or "the Act") pursuant to 33 U.S.C. 1251 *et. seq.*, and the regulations promulgated pursuant thereto.

3. WHEREAS, MSD owns and operates a regional sewage system in Jefferson County, Kentucky; which includes both (a) a combined sewer system (hereinafter "CSS") that conveys sanitary wastewaters and stormwaters through a single pipe system to MSD's Morris Forman Wastewater Treatment Plant ("MFWTP"), and (b) separate sanitary sewer systems (hereinafter "SSS") which convey sanitary wastewaters to other MSD wastewater plants ("WWTPs") and through the CSS to MFWTP.

4. WHEREAS, this Amended Consent Decree between the Cabinet, EPA and MSD addresses SSOs and Unauthorized Discharges, as those terms are defined herein, from MSD's SSS, CSS and WWTPs, and discharges from MSD's combined sewer overflow ("CSO") locations identified in the MFWTP Kentucky Pollutant Discharge Elimination System

("KPDES") permit, and it requires MSD to finalize, develop, submit and implement plans for the continued improvement of MSD's Sewer System.

5. WHEREAS, the Cabinet initially filed an action against MSD in Franklin Circuit Court, Civil Action Number 04-CI-313, on February 27, 2004. The Cabinet subsequently filed an action in this Court against MSD, Civil Action No. 3:05cv-236-S, on April 25, 2005, pursuant to Section 505 of the Act, 33 U.S.C. § 1365, and KRS Chapter 224. EPA filed its motion to intervene as of right and complaint in intervention under Section 505(c)(2) of the Act, 33 U.S.C. § 1365(c)(2), alleging that MSD violated and continued to violate Section 301 of the Act, 33 U.S.C. §1311. Concurrently with the filing of the original complaints in this Court, the original Consent Decree was lodged concerning SSOs and Unauthorized Discharges from MSD's SSS, CSS and WWTPs, and discharges from MSD's CSO locations identified in its MFWTP KPDES permit, alleging violations of the Act and KRS Chapter 224. The Court entered the original Consent Decree on August 12, 2005. This Amended Consent Decree has been filed concurrently with an amended complaint alleging that MSD has further violated the Act and KRS Chapter 224. All parties agree that this Court has jurisdiction over this action pursuant to the Act, and under the provisions for supplemental jurisdiction in 28 U.S.C. § 1367 for claims pursuant to KRS Chapter 224. The Cabinet's claims arise under the powers and duties set forth in KRS 224.10-100. EPA's claims arise under the powers and duties set forth in Section 309 of the Act, 33 U.S.C. § 1319.

6. WHEREAS, the parties agree and recognize that the process for MSD under applicable law requiring it to comply with its KPDES permits and upgrade its SSS, CSS and WWTPs to adequately address SSOs and Unauthorized Discharges, and discharges from MSD's CSO locations identified in its MFWTP KPDES permit, is an ongoing and evolving effort from

the assessment process, to the design and construction of necessary infrastructure to meet permit conditions. The Cabinet and EPA are charged with the duties of applying applicable state and federal law and regulating MSD in a manner protective of human health and the environment. This process requires efforts that include, but are not limited to, characterizations, modeling, assessments, engineering design studies, implementation of compliance measures, and construction projects that will adequately insure MSD's compliance with permit conditions under applicable law. The parties recognize that it will take MSD several years to achieve full compliance. However, in the interest of adequately informing the public and allowing full participation by the public in this process, the parties agree that this Amended Consent Decree is the appropriate mechanism for achieving these objectives.

7. WHEREAS, MSD maintains that it has implemented measures to date in its efforts to achieve compliance under its KPDES permits, including abatement of many SSOs and establishing controls on certain CSOs. This Amended Consent Decree includes lists of those items completed and additional work planned for the near future to provide the public the information and an opportunity for public notice and comment on additional specific measures being taken or to be taken, in accordance with the provisions of 28 C.F. R. § 50.7. The parties also anticipate that this Amended Consent Decree will be further amended as MSD develops, designs, submits for review and approval, and implements additional compliance measures and projects, including those specified herein. As part of that process of proposing amendments to this Amended Consent Decree to incorporate the results of characterizations, assessments, modeling, engineering design studies, and to implement compliance measures and construction projects, the public will have an opportunity, in accordance with the provisions of 28 C.F. R. § 50.7, for notice and comment to present facts or considerations on whether the proposals are

appropriate, proper and adequate to achieve full compliance with the Act.

8. WHEREAS, the parties entered into the original Consent Decree and this Amended Consent Decree to address the claims arising from MSD's alleged violations as set forth in the original complaints and the amended complaint and as summarized below, and to agree to the performance of certain specified projects and to the completion of certain plans, characterizations, modeling, assessments, engineering design studies, implementation of compliance measures and construction projects on or before dates certain regarding SSOs and Unauthorized Discharges from MSD's SSS, CSS and WWTPs, and discharges from MSD's CSO locations identified in its MFWTP KPDES permit, as set forth in this Amended Consent Decree.

9. WHEREAS, MSD has documented CSOs in its CSS. These CSOs are identified under MSD's MFWTP KPDES permit. In 1996 and 1997, MSD submitted a draft Long Term Control Plan ("LTCP") under the MFWTP KPDES permit and EPA's Combined Sewer Overflow Control Policy, 59 Fed. Reg. 18688 ("CSO Control Policy"). MSD has submitted an interim LTCP and has agreed to submit the final LTCP as required by the terms of this Amended Consent Decree.

10. WHEREAS, during the early 1970s, Louisville conducted an Urban Renewal Program that MSD maintains allowed it to separate some CSOs and eliminate several others. During the 1980s, MSD maintains it further modified approximately ten major CSOs. In addition to the regular maintenance performed on the collection system, MSD maintains it implemented a program in 1986 to further improve the operation and maintenance of the CSS. The program included mathematical modeling of CSO and interceptor system performance supported by a CSO monitoring program. By the early 1990s, MSD maintains it developed a pretreatment program to minimize CSO impact and correct dry weather overflow problems.

11. WHEREAS, MSD has identified SSOs and Unauthorized Discharges in MSD's Sewer System and WWTPs which the Cabinet and EPA contend are violations of state law and the Act. MSD's identification of SSOs and Unauthorized Discharges has been made in MSD's Sanitary Sewer Overflow Plan ("SSOP") and the annual updates to that plan made in MSD's Annual WATERS Report. As required by the terms of this Amended Consent Decree, MSD has submitted an updated SSOP and an interim Sanitary Sewer Discharge Plan ("SSDP"), and has agreed to submit the final SSDP.

12. WHEREAS, MSD submitted to the Cabinet the following plans and reports:

a. Annual Combined Sewer Operational Plan (hereinafter "CSOP") reports from 1993 to 1998;

b. A draft LTCP for Region 1 with the 1996 CSOP;

c. A draft LTCP for Regions 2 & 3 with the 1997 CSOP;

d. A Nine Minimum Controls (hereinafter "NMC") compliance report on January 6, 1997;

e. Annual SSOP reports in 1997 and 1998; and

f. Annual WATERS reports since 1999 containing updates on the Municipal Separate Storm Sewer System Program (hereinafter "MS4"), CSOP, LTCP, NMC, and SSOP progress.

13. WHEREAS, the Cabinet approved a LTCP submitted by MSD pursuant to the MFWTP KPDES permit as reflected in the response to comments on the renewal of the MFWTP KPDES permit dated August 2, 1999.

14. WHEREAS, it is the purpose of the parties in entering into this Amended Consent Decree to further the objectives of KRS Chapter 224 and the Act, including the CSO Control

Policy. All plans, reports, construction, remedial maintenance, and other obligations in the original Consent Decree, this Amended Consent Decree, and any additional amendments to this Amended Consent Decree, or resulting from the activities required by the original Consent Decree, the Amended Consent Decree, and any additional amendments to this Amended Consent Decree, shall have the objective of ensuring that MSD complies with the Act, and all applicable federal and state regulations, and meets the goals and objectives of the Act to eliminate SSOs and Unauthorized Discharges from MSD's SSS, CSS and WWTPs, and to address discharges from MSD's CSO locations identified in its MFWTP KPDES permit, as set forth in this Amended Consent Decree.

15. WHEREAS, MSD neither admits nor denies the alleged violations described above, but acknowledges that SSOs and Unauthorized Discharges have occurred and accepts the obligations imposed under this Amended Consent Decree.

16. WHEREAS, the parties agree, without adjudication of facts or law, that settlement of the Cabinet's and EPA's claims in accordance with the terms of this Amended Consent Decree is in the public interest and have agreed to entry of this Amended Consent Decree without trial of any issues, and the parties hereby stipulate that, in order to resolve these claims stated in the Cabinet's and EPA's original complaints and amended complaint, this Amended Consent Decree should be entered.

17. NOW THEREFORE, in consideration of the recitals above listed and in the interest of settling all civil claims and controversies involving the violations described above before taking any testimony and without adjudication of any fact or law, the parties hereby consent to the entry of this Amended Consent Decree; and the Court hereby finds that settlement of the claims alleged without further litigation or trial of any issues is fair, reasonable and in the

public interest and the entry of this Amended Consent Decree is the most appropriate way of resolving the claims alleged, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

JURISDICTION AND VENUE

18. This Court has jurisdiction and supplemental jurisdiction over the subject matter of this action, and over the parties hereto, pursuant to Sections 309 and 505 of the Act, 33 U.S.C. §§1319, 1365 and 28 U.S.C. §§1331, 1345, 1355, and 1367. Venue is proper in the Western District of Kentucky pursuant to Section 309 of the Act, 33 U.S.C. §1319, and 28 U.S.C. §§1391 and 1395(a).

APPLICATION AND SCOPE

19. The provisions of this Amended Consent Decree shall apply to and be binding upon the parties to this action, and their agents, employees, successors, and assigns, as well as to all persons acting under the direction and/or control of MSD, including firms, corporations, and third parties such as contractors engaged in implementation of this Amended Consent Decree. MSD shall provide a copy of this Amended Consent Decree to any consultant or contractor selected or retained to perform any activity required by this Amended Consent Decree.

AMENDMENT PROVISIONS

20. The parties acknowledge that, when they entered into the original Consent Decree they anticipated that it may be amended. The parties now enter into this Amended Consent Decree to clarify, amend and expand upon some of the provisions set forth in the original Consent Decree. In particular, the parties desire in this Amended Consent Decree to define certain terms; set forth more specific injunctive relief designed to eliminate prohibited Bypasses and insure that all flows entering MSD's WWTPs (other than the Morris Forman WWTP during

wet weather) receive a minimum of Secondary Treatment as defined herein; require reporting of Bypasses pursuant to Kentucky regulations, MSD's KPDES permits and this Amended Consent Decree; and require accurate, continuous monitoring of MSD's WWTP flows and accurate recording of such monitoring results pursuant to MSD's KPDES permits. This Amended Consent Decree supercedes and replaces the original Consent Decree.

OBJECTIVES

21. It is the express purpose of the parties in entering this Amended Consent Decree to further the objectives of the Act, as stated in Section 101 of the Act, 33 U.S.C. §1251, and to eliminate SSOs and Unauthorized Discharges from MSD's SSS, CSS and WWTPs, and to address discharges from MSD's CSO locations identified in its MFWTP KPDES permit, in the manner set forth in this Amended Consent Decree. All plans, reports, construction, remedial maintenance, and other obligations in this Amended Consent Decree or resulting from the activities required by this Amended Consent Decree, and under any subsequent amendments to this Amended Consent Decree, shall have the objective of insuring that MSD complies with the Act, all applicable federal and state regulations, and the terms and conditions of MSD's KPDES permits, and meets the objectives of the CSO Control Policy.

DEFINITIONS

22. Unless otherwise defined herein, the terms used in this Amended Consent Decree shall have the meaning given to those terms in the Act and the regulations promulgated thereunder. For purposes of this Amended Consent Decree, whenever the terms listed below are used in this Amended Consent Decree or appendices attached thereto and/or incorporated thereunder, the following definitions shall apply:

a. "Bypass" shall mean the intentional diversion of waste streams from any portion

of a treatment facility as set forth at 40 C.F.R. § 122.41(m)(1) and 401 KAR 5:002, Section 1(36). The practice of bypassing Secondary Treatment units and recombining the bypass flow with the secondary effluent prior to discharge, known commonly as blending, recombination, or diversion, constitutes a Bypass. For purposes of this Amended Consent Decree only, the term Bypass shall specifically exclude (1) practices at MSD's MFWTP that are in accordance with the KPDES permit and the CSO Control Policy and (2) any flow that exceeds the design capacity of a tertiary process at any WWTP in accordance with a KPDES permit.

b. "Combined Sewer Overflow" or "CSO" shall mean an outfall identified as a combined sewer overflow or CSO in MSD's KPDES permit for the MFWTP from which MSD is authorized to discharge during wet weather.

c. "Combined Sewer System" or "CSS" shall mean the portion of MSD's Sewer System designed to convey municipal sewage (domestic, commercial and industrial wastewaters) and stormwater runoff through a single-pipe system to MSD's MFWTP or CSOs.

d. "KPDES permit" shall mean any National Pollutant Discharge Elimination System permit issued to MSD by the Cabinet pursuant to the authority of the Act and KRS Chapter 224 and the regulations promulgated thereunder.

e. "Sanitary Sewer System" or "SSS" shall mean the portion of MSD's Sewer System designed to convey only municipal sewage (domestic, commercial and industrial wastewaters) to MSD's WWTPs.

f. "Sanitary Sewer Overflow" or "SSO" shall mean any discharge of wastewater to

waters of the United States from MSD's Sewer System through a point source not authorized by a KPDES permit, as well as any release of wastewater from MSD's Sewer System to public or private property that does not reach waters of the United States, such as a release to a land surface or structure that does not reach waters of the United States; provided, however, that releases or wastewater backups into buildings that are caused by blockages, flow conditions, or malfunctions in a building lateral, or in other piping or conveyance system that is not owned or operationally controlled by MSD are not SSOs.

g. "Secondary Treatment" is a biological wastewater treatment technology required by the Clean Water Act for discharges from Publicly Owned Treatment Works, as that term is defined at 40 C.F.R. § 403.3(q). The minimum level of effluent quality attainable through the application of secondary treatment is established in 40 C.F.R. § 133.102 in terms of the parameters for 5-day biochemical oxygen demand ("BOD_5") concentration and percent removal, total suspended solids ("TSS") concentration and percent removal, and pH.

h. "Sewer System" shall mean the wastewater collection, retention, and transmission system that MSD owns or operates, that are designed to collect, retain and convey municipal sewage (domestic, commercial and industrial wastewaters) to MSD's WWTPs or CSOs which is comprised of the CSS and the SSS.

i. "Unauthorized Discharge" shall mean (a) any discharge of wastewater to waters of the United States from MSD's Sewer System or WWTPs through a point source not authorized by a KPDES permit and (b) any Bypass at MSD's WWTPs prohibited pursuant to the provisions of 40 C.F.R. § 122.41(m)(2) and (4) or 401

KAR 5:065, Section 1(13)(a) and (c).

j. "Wastewater Treatment Plant" or "WWTP" shall mean the devices or systems used in the storage, treatment, recycling, and reclamation of municipal sewage that MSD owns or operates, and for which KPDES permits have been or will be issued to MSD.

COMPLIANCE PROGRAM AND SCHEDULES

23. To effectuate the remedial measures under this Amended Consent Decree, MSD has created a directorship-level position ("Director") who reports directly to MSD's Executive Director and the Board of MSD; has organized a Wet Weather Team regarding CSOs, SSOs and Unauthorized Discharges; establishes communications, coordination and control procedures for team members and other participants; and identifies and schedules tasks and associated resource needs.

The Director shall establish management tasks such as: estimating, forecasting, budgeting, and controlling costs; planning, estimating, and scheduling program activities; developing and evaluating quality control practices; and developing and controlling the program scope.

The Director has assembled a Wet Weather Team that includes all entities that have a stake in the program outcome, and is sufficiently multidisciplinary to address the myriad of engineering, economic, environmental, and institutional issues that will be raised during the implementation of the remedial measures under this Amended Consent Decree. The team will prepare a plan for funding the program and will develop a program for public information, education, and involvement.

The Wet Weather Team assembled by the Director contains MSD personnel such as

wastewater treatment plant operators and engineering personnel, local political officials, and the general public, including rate payers and environmental interests. Private consulting resources are also included. The Wet Weather Team may consult as appropriate with the Cabinet and EPA officials on the progress of MSD's implementation of the requirements of this Amended Consent Decree.

24. **Early Action Plan.** In accordance with the original Consent Decree, MSD prepared and submitted an Early Action Plan which the Cabinet/EPA reviewed and jointly approved. The Early Action Plan included the following components:

a. **Nine Minimum Controls ("NMC") Compliance.** The Early Action Plan contained documentation demonstrating the status of MSD's compliance with the NMC requirements within the CSS as set forth in the CSO Control Policy. The documentation of the compliance status and the proposed activities was consistent with the "Guidance for Nine Minimum Controls", EPA 832-B-95-003, May 1995. The documentation submitted demonstrates compliance with the following controls:

(1) Proper operation and regular maintenance programs for the CSS and the CSOs;

(2) Maximum use of the collection system for storage;

(3) Review and modification of pretreatment requirements to assure CSO impacts are minimized;

(4) Maximization of flow to the WWTP for treatment;

(5) Prohibition of CSOs during dry weather, including provision for backup power where appropriate (provided, however, those discharges resulting

from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988, shall be addressed under the interim and final LTCP);

(6) Control of solid and floatable materials, including installation of devices where appropriate;

(7) Pollution prevention;

(8) Public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts, including improving the current signage at each CSO location to an easily readable type size and style, and in both English and Spanish; and

(9) Monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.

The NMC Compliance portion of the Early Action Plan was approved by the Cabinet/EPA on February 22, 2007, and is hereby deemed incorporated into this Amended Consent Decree as an enforceable requirement of this Amended Consent Decree.

b. **Capital Improvement Project List.** The Early Action Plan includes a list that identifies projects that have been completed by MSD prior to the implementation of the final SSDP and final LTCP. The Capital Improvement Project List includes, at a minimum, the following projects, which MSD represents have been completed before the Abatement Date listed below. Project costs are also based on MSD calculations. Those projects completed are included to demonstrate the

efforts MSD maintains it has been making to date to address compliance.

(1) Project Locations as follows:

SSO Location	Number of Discharges	WTP Service Area	Approximate Cost	Abatement Date	
				Quarter	Calendar Year
7204 Preston Hwy	2	DGWTP[1]	$1,165,000	1 QTR	2002
West Goose Creek PS	1	MFWTP[2]	$10,000	3 QTR	2002
Park Ridge Woods PS	1	DGWTP	$5,000	4 QTR	2002
Vagabond and Siesta	2	DGWTP	$500,000	2 QTR	2002
Melody PS	1	MFWTP	$2,238,000	1 QTR	2003
Cedar Creek WTP	1	CCWTP[3]	$34,000,000	1 QTR	2003
12700 Abbey Lane	1	DGWTP	$178,000	2 QTR	2003
Fairway View PS	1	Hunting Creek TP	$5,000	2 QTR	2003
Olde Copper PS	8	FFWTP[4]	$12,000	1 QTR	2004
Running Creek WTP	2	Running Creek TP	$1,680,000	1 QTR	2004
Savage Dr. PS	1	DGWTP	$1,000,000	1 QTR	2004
Woodland Hills PS	8	MFWTP and FFWTP	$2,452,000	2 QTR	2004
English Station WTP	1	English Station TP	$2,500,000	2 QTR	2004
Jarvis Ln PS	2	MFWTP	$75,000	2 QTR	2005
Hurstbourne Ln PS	8	MFWTP	$224,000	2 QTR	2005
Hite Creek WTP	4	HCWTP	$12,700,000	4 QTR	2005
Shelbyville & Marshall	3	MFWTP	$3,148,000	4 QTR	2005
Canoe Lane PS	3	MFWTP	$200,000	2 QTR	2006
Gunpowder PS	3	Hunting Creek TP	$101,000	2 QTR	2006
Total	53		$62,193,000		

[1] DGWTP is Derek R. Guthrie Water Quality Treatment Center. [2]MFWTP is Morris Forman Wastewater Treatment Plant. [3]CCWTP is Cedar Creek Wastewater Treatment Plant. [4]FFWTP is Floyds Fork Wastewater Treatment Plant.

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(2) Installation of backup power at the following facilities within the CSS by the date indicated, which MSD believes resulted in a total overflow volume reduction of 19 million gallons annually calculated on MSD's previous reporting history:

A. 34th Street Pump Station, at an approximate cost of $300,000 as calculated by MSD, completed by the end of the 1st quarter 2006;

B. Buchanan Street Pump Station, at an approximate cost of $630,000 as calculated by MSD, completed by the end of the 2nd quarter 2006;

(3) Installation of solids and floatables control devices at fifteen (15) CSO locations as shown below by the date indicated:

CSO	**Approximate Cost**	Completion Date Quarter	Completion Date Calendar Year
109	$164,000	4 QTR	2004
113	$146,500	4 QTR	2004
125	$122,000	4 QTR	2004
126	$92,000	4 QTR	2004
127	$62,400	4 QTR	2004
144	$34,800	4 QTR	2004
166	$12,500	4 QTR	2004
28	$40,300	1 QTR	2005
30	$40,800	1 QTR	2005
34	$42,800	1 QTR	2005
54	$45,800	1 QTR	2005
119	$46,300	1 QTR	2005
83	$65,500	2 QTR	2005
121	$106,400	2 QTR	2005

82	$49,400	3 QTR	2005
Total	$1,071,500		

(4) Elimination of three (3) CSO locations through sewer separation projects as shown below by the date indicated:

CSO	**Approximate Cost**	**Completion Date Quarter**	**Completion Date Calendar Year**
CSO 209	$2,560,000	3 QTR	2005
CSO 87	$1,058,000	3 QTR	2006
CSO 147	$2,225,000	3 QTR	2007

(5) Implementation of a fully operational Real Time Control System, Initial Implementation phase, which MSD estimates achieved a minimum of 10% reduction of the average annual overflow volume by August 12, 2006.

The portion of the Early Action Plan consisting of the Capital Improvement Project List was not submitted for Cabinet/EPA approval.

c. **CMOM (Capacity, Management, Operation and Maintenance) Programs Self-Assessment.** The Early Action Plan includes a CMOM Programs Self-Assessment of MSD's combined and separate sewer collection and transmission systems, in accordance with US EPA Region IV methodology as set forth in the CDROM disk attached hereto as **Exhibit A**, to ensure that MSD has CMOM Programs in place that are effective at eliminating SSOs, including Unauthorized Discharges, within the CSS and SSS. This Self-Assessment includes an evaluation of, and recommendation of improvements to, each CMOM Program to ensure that such Programs contain the following key CMOM elements: written,

defined purpose(s); written defined goal(s); documented in writing with specific details; implemented by well trained personnel; established performance measures; and written procedures for periodic review. Recommended improvements include schedules for implementation. Particular emphasis is placed upon the following Programs, as more particularly described in the attached CDROM: Continuous Sewer System Assessment Program; Infrastructure Rehabilitation Program; Collection and Transmission Plans Program; System Capacity Assurance Program; Water Quality Monitoring Program; Pump Station Preventive Maintenance Program; Gravity Line Preventive Maintenance Program; Contingency Plan for Utility Infrastructure (this includes the evaluation of the need for backup power for each pump station); and Sewer Use Ordinance Legal Support Program. The portion of the Early Action Plan containing MSD's CMOM Programs Self-Assessment, the CMOM Programs and recommended improvements and schedules was approved by the Cabinet/EPA on August 21, 2006, and is hereby deemed incorporated into this Amended Consent Decree as an enforceable requirement of this Amended Consent Decree. In particular, MSD's System Capacity Assurance Program, one of the CMOM Programs evaluated pursuant to this paragraph, is attached hereto as **Exhibit B**.

d. **Sewer Overflow Response Protocol ("SORP").** The Early Action Plan includes a SORP in compliance with 401 KAR 5:015 to establish the timely and effective methods and means of: (1) responding to, cleaning up, and/or minimizing the impact of SSOs and Unauthorized Discharges; (2) reporting the location, volume, cause and impact of SSOs and Unauthorized Discharges, to the Cabinet and EPA;

and (3) notifying the potentially impacted public. The SORP was approved by the Cabinet/EPA on August 21, 2006, and MSD began to implement the SORP within fifteen (15) days of receiving the Cabinet's/EPA's approval. By the anniversary date of the approval of the SORP, MSD shall annually review the SORP and propose changes as appropriate subject to Cabinet/EPA review and approval. A copy of future updates to the SORP shall also be provided to the Louisville Regional Office of the Division of Water within fifteen (15) days of incorporation of the update. The SORP, and any subsequently approved changes, shall be deemed incorporated into this Amended Consent Decree as an enforceable requirement of this Amended Consent Decree.

25. **Discharge Abatement Plans.** MSD shall prepare and submit, for Cabinet/EPA review and joint approval, a Sanitary Sewer Discharge Plan ("SSDP") designed to eliminate Unauthorized Discharges. MSD shall also prepare and submit an updated LTCP, for Cabinet/EPA review and joint approval, which complies with the CSO Control Policy. MSD shall develop these Discharge Abatement Plans for the elimination of Unauthorized Discharges, the reduction and control of discharges from CSO locations identified in the MFWTP KPDES permit, and the improvement of water quality in the receiving waters. MSD shall prepare conventional and innovative or alternative designs as part of each plan, including but not limited to: sewer rehabilitation, sewer replacement, sewer separation, relief sewers, above ground or below ground storage, high rate Secondary Treatment, illicit connection removal, remote wet weather Secondary Treatment facilities, and other appropriate alternatives. Designs shall be based on sound engineering judgment and shall be in accordance with generally accepted engineering design criteria and may include interim remedial measures to reduce pollutant

loading and improve water quality in the short term while alternatives for final remedial measures are being developed, evaluated and implemented.

a. **Sanitary Sewer Discharge Plan.**

(1) MSD submitted to the Cabinet and EPA an update to its then current SSOP on February 10, 2006, which details the improvements to be accomplished through December 31, 2008. The updated SSOP is deemed incorporated into this Amended Consent Decree as an enforceable requirement of this Amended Consent Decree.

(2) On September 28, 2007, MSD submitted to the Cabinet/EPA for review and approval an interim SSDP to identify remedial measures to eliminate Unauthorized Discharges, including those resulting from MSD's use of pumps, within the Hikes Point and the Beechwood Village areas, and to eliminate Unauthorized Discharges at the Highgate Pump Station and the Southeastern Diversion Structure. A copy of the interim SSDP is attached hereto as **Exhibit C**. The interim SSDP includes expeditious schedules for design, initiation of construction, and completion of construction of remedial measures; provided, however, such schedules shall not extend beyond December 31, 2011 for those Unauthorized Discharges within the Beechwood area and at the Southeastern Diversion Structure, and such schedules shall not extend beyond December 31, 2013 for those Unauthorized Discharges in the Hikes Point area and at the Highgate Pump Station. The interim SSDP was approved by the Cabinet/EPA on July 24, 2008, and is hereby deemed incorporated into this Amended

Consent Decree as an enforceable requirement of this Amended Consent Decree.

(3) By December 31, 2008, MSD shall submit to the Cabinet/EPA for review and joint approval a final SSDP to identify remedial measures to eliminate Unauthorized Discharges at locations other than those identified in subparagraph (2) above. The final SSDP shall contain the long term SSDP projects, including schedules, milestones, and deadlines. The final SSDP shall also include the results of an evaluation of WWTP peak flow treatment capacity for any WWTP that will receive additional flow based on any interim or final SSDP project. Such evaluation shall be consistent with the EPA publications "Improving POTW Performance Using the Composite Correction Approach," EPA CERI, October 1984, and "Retrofitting POTWs," EPA CERI, July 1989. The final SSDP shall include, at a minimum, the following elements:

A. A map that shows the location of all known Unauthorized Discharges. The map shall include the areas and sewer lines that serve as a tributary to each Unauthorized Discharge. Smaller maps of individual tributary areas also may be included to show the lines involved in more detail.

B. A description of each Unauthorized Discharge location that includes:

(i) The frequency of the Unauthorized Discharge;

(ii) The annual volume released of the Unauthorized

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Discharge;

(iii) A description of the type of Unauthorized Discharge location, i.e. manhole, pump station, constructed discharge pipe, etc.;

(iv) The receiving stream;

(v) The immediate area and downstream land use, including the potential for public health concerns;

(vi) A description of any previous (within the last 5 years), current, or proposed studies to investigate the Unauthorized Discharge; and

(vii) A description of any previous (within the last 5 years), current, or proposed rehabilitation or construction work to remediate or eliminate the Unauthorized Discharge.

C. A prioritization of the Unauthorized Discharge locations identified above based upon the frequency, volume and impact on the receiving stream and upon public health, and in coordination with the CMOM programs. Based upon this prioritization, MSD shall develop remedial measures and expeditious schedules for design, initiation of construction and completion of construction. Such schedules shall be phased based on sound engineering judgment and in no case shall extend beyond December 31, 2024.

D. A plan to involve stakeholders in the planning, prioritization and selection of projects.

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Upon review of the final SSDP, the Cabinet/EPA may jointly (1) approve, in whole or in part, or (2) provide comments to MSD identifying the deficiencies. Upon receipt of Cabinet/EPA comments, MSD shall have sixty (60) days to revise and resubmit the final SSDP for review and approval, subject only to MSD's rights under the dispute resolution provisions of this Amended Consent Decree. Upon resubmittal, the Cabinet/EPA may jointly (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the final SSDP is disapproved, the Cabinet/EPA may jointly deem MSD to be out of compliance with this Amended Consent Decree for failure to timely submit such portion and may assess stipulated penalties pursuant to this Amended Consent Decree, subject only to MSD's rights under the dispute resolution provisions of this Amended Consent Decree. Upon Cabinet/EPA joint approval of all or any part of the final SSDP, the final SSDP, or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be incorporated into this Amended Consent Decree by proposed material amendment under paragraph 60 of this Amended Consent Decree and, upon approval by the Court, become an enforceable requirement of this Amended Consent Decree.

b. **Long Term Control Plan.**

(1) MSD submitted to the Cabinet/EPA on February 10, 2006 for review and joint approval an interim LTCP that updates the draft LTCP previously

submitted to the Cabinet in 1996 and 1997.

A. The interim LTCP specifies the activities which demonstrate MSD's efforts to date to achieve compliance with the following goals:

(i) Ensure that if CSOs occur, they are only as a result of wet weather (including activities to address those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988);

(ii) Bring all wet weather CSO discharge points into compliance with the technology-based and water quality-based requirements of the Act;

(iii) Minimize the impacts of CSOs on water quality, aquatic biota, and human health; and

(iv) Bring stakeholders into the planning, prioritization and selection of projects process.

B. The interim LTCP describes the manner in which MSD plans to undertake the development of the final LTCP, including, at a minimum, the following elements:

(i) Characterization, monitoring, modeling activities, and design parameters as the basis for selection and design of effective CSO controls (including controls to address those

discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988);

(ii) A public participation process that actively involves the affected public in the decision-making to select long-term CSO controls;

(iii) Consideration of sensitive areas as the highest priority for controlling overflows;

(iv) Evaluation of alternatives that will enable MSD, in consultation with the Cabinet and EPA, water quality standards authority, and the public, to select CSO controls that will meet the requirements of the Act;

(v) Cost/performance considerations to demonstrate the relationships among a comprehensive set of reasonable control alternatives;

(vi) Operational plan revisions to include agreed-upon long-term CSO controls; and

(vii) Maximization of treatment at MSD's existing wastewater treatment plants for wet weather flows.

The interim LTCP was approved by the Cabinet/EPA on February 27, 2007, and is hereby deemed incorporated into this Amended Consent Decree as an enforceable requirement of this Amended Consent Decree.

(2) By December 31, 2008, MSD shall submit a final LTCP to the Cabinet/EPA for review and joint approval that complies with the CSO Control Policy and is consistent with EPA's "Guidance for Long-Term Control Plan," EPA 832-B-95-002, September 1995. The final LTCP shall include schedules, deadlines and timetables for remedial measures that achieve full compliance with the criteria listed for the demonstrative approach or the presumptive approach as soon as practicable based on sound engineering judgment but in no event later than December 31, 2020.

A. The final LTCP shall meet the following goals:

(i) Ensure that if CSOs occur, they are only as a result of wet weather (this goal shall include addressing those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988);

(ii) Bring all wet weather CSO discharge points into compliance with the technology-based and water quality-based requirements of the Act; and

(iii) Minimize the impacts of CSOs on water quality, aquatic biota, and human health.

B. The final LTCP shall include, at a minimum, the following elements:

(i) The results of characterization, monitoring, modeling

activities, and design parameters as the basis for selection and design of effective CSO controls (including controls to address those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988);

(ii) The results of an evaluation of WWTP peak flow treatment capacity for any WWTP, other than MFWTP, that will receive additional flow based on any LTCP project. Such evaluation shall be consistent with the EPA publications "Improving POTW Performance Using the Composite Correction Approach," EPA CERI, October 1984, and "Retrofitting POTWs," EPA CERI, July 1989;

(iii) A report on the public participation process;

(iv) Identification of how the final LTCP addresses sensitive areas as the highest priority for controlling overflows;

(v) A report on the cost analyses of the alternatives considered;

(vi) Operational plan revisions to include agreed-upon long-term CSO controls;

(vii) Maximization of treatment and evaluation of treatment capacity at MFWTP;

(viii) Identification of and an implementation schedule for the selected CSO controls; and

(ix) A post-construction compliance monitoring program adequate to verify compliance with water quality-based Clean Water Act requirements and ascertain the effectiveness of CSO controls.

Upon review of the final LTCP, the Cabinet/EPA may jointly (1) approve, in whole or in part, or (2) provide comments to MSD identifying the deficiencies. Upon receipt of Cabinet/EPA comments, MSD shall have sixty (60) days to revise and resubmit the final LTCP for review approval, subject only to MSD's rights under the dispute resolution provisions of this Amended Consent Decree. Upon resubmittal, the Cabinet/EPA may jointly (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the final LTCP is disapproved, the Cabinet/EPA may jointly deem MSD to be out of compliance with this Amended Consent Decree for failure to timely submit the final LTCP and may assess stipulated penalties pursuant to this Amended Consent Decree, subject only to MSD's rights under the dispute resolution provisions of this Amended Consent Decree. Upon Cabinet/EPA joint approval of all or any part of the final LTCP, the final LTCP, or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be incorporated into this Amended Consent Decree by proposed material amendment under paragraph 60 of this Amended Consent Decree and, upon approval by the Court, become an enforceable requirement of this

Amended Consent Decree.

26. **Jeffersontown WWTP.** MSD will be taking action pursuant to paragraphs 26.b. and c. below of this Amended Consent Decree with the objective of eliminating prohibited Bypasses at the Jeffersontown WWTP. Before such action is completed, MSD shall also implement a Process Controls Program to minimize the frequency, duration and volume of any Bypass at the Jeffersontown WWTP.

a. **Process Controls Program**. On or before October 31, 2008, MSD shall submit to EPA/Cabinet for review and approval a Process Controls Program designed to minimize the frequency, duration and volume of any Bypass at the Jeffersontown WWTP through proper management, operation and maintenance controls.

(1) The Process Controls Program shall include, without limitation, the following:

A. Activities identified by MSD in its February 19, 2008 letter to EPA which is attached hereto and incorporated herein as **Exhibit D**.

B. Any relevant findings from the implementation of the Comprehensive Performance Evaluation pursuant to paragraph 26.b. below.

C. Identification of necessary activities to insure that SSOs from the siphon head box or any manhole within two thousand feet of the headworks of the Jeffersontown WWTP are also minimized to the greatest extent possible.

D. Identification of staffing needs to insure that plant operators are present during periods during which the plant is likely to Bypass.

E. A process for monitoring and recording plant flow, Secondary Treatment flow, concentration of mixed liquor suspended solids ("MLSS"), depth of sludge blanket levels and other appropriate criteria that the operations staff will use to determine the effective treatment capacity of the secondary system, which establishes when a Bypass will commence and will cease.

F. The use of available laboratory and on-line instrumentation data before making a decision to change process controls.

G. Identification of the MSD staff positions that will be responsible for implementing the Process Control Program.

H. Identification of activities which MSD shall undertake when conditions indicate a probable need to Bypass. Such activities may include monitoring and/or adjusting clarifier sludge blankets, balancing flows to Secondary Treatment units, etc.

I. A process for evaluating the effectiveness of the controls and for making adjustments as necessary to meet the goals of the Process Controls Program.

J. An operations record keeping protocol which shall establish a system for accurately recording MSD's operation of the Jeffersontown WWTP including its Bypass activities. Such records shall include operator logs, activity reports, performance reports, documentation of all Bypass events and a listing of the criteria that determined when a Bypass commenced and ceased.

K. Performance measures for ensuring that the controls being implemented are as effective as possible.

(2) Upon review of the Process Controls Program, the Cabinet/EPA may (1) approve, in whole or in part, or (2) provide comments to MSD for the purpose of identifying the deficiencies in the Program. Upon receipt of Cabinet/EPA comments, MSD shall have sixty (60) days to revise and resubmit the Process Controls Program for review and approval, subject only to MSD's rights under the dispute resolution provisions. Upon resubmittal, the Cabinet/EPA may (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the Process Controls Program is disapproved, then EPA may deem MSD to be out of compliance with this Amended Consent Decree for failure to timely submit the Process Controls Program and may assess stipulated penalties pursuant to this Amended Consent Decree. Upon Cabinet/EPA approval of all or any part of the Process Controls Program, the Process Controls Program, or any approved part of the Process Controls Program (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be deemed incorporated into this Amended Consent Decree as an enforceable requirement of this Amended Consent Decree.

b. **Comprehensive Performance Evaluation ("CPE").** Concurrent with or as part of the final SSDP which is to be submitted on or before December 31, 2008 pursuant to paragraph 25.a.(3) above, MSD shall also submit to the Cabinet/EPA

for review and approval a Comprehensive Performance Evaluation ("CPE") for the Jeffersontown WWTP.

(1) The purpose of this CPE is to identify any flow and/or loading rate restricted treatment process unit(s) at the Jeffersontown WWTP which limit the plant's ability to comply with KPDES permit requirements, including those necessary to provide the required application of Secondary Treatment to all flows into the WWTP. The CPE shall also evaluate the cause of any effluent limit violation occurring at the WWTP within the last three (3) years.

(2) The CPE shall include an in-depth diagnostic evaluation of the capacity and operation of the Jeffersontown WWTP in terms of its ability to meet all terms of the KPDES permit, including the Bypass prohibition set forth at 40 C.F.R. § 122.41(m)(2) and (4) and 401 KAR 5:065, Section 1(13)(a) and (c). The CPE shall also evaluate influent pumping capacities and the cause of any SSOs occurring within two thousand feet of the headworks of Jeffersontown WWTP including any SSO from the siphon head box. The CPE shall establish procedures that MSD will use to prepare a Composite Correction Plan ("CCP"), as set forth below, based on the results of the CPE. The CPE shall employ flow modeling and other appropriate techniques to evaluate WWTP capacity and operation, taking into account the net (cumulative) increase or decrease to the existing volume of wastewater introduced to the WWTP as a result of MSD's actual and anticipated increases in flow from the authorization of new sewer service

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connections and/or from existing sewer service connections, and the reduction of inflow and infiltration into the Sewer System. The CPE shall also identify the peak flow/duration and the long term sustained flow/duration which can be put through the Jeffersontown WWTP Secondary Treatment units without adversely impacting the Secondary Treatment units (e.g. causing a washout or excessive loss of mixed liquor suspended solids). To the extent applicable, the CPE shall be consistent with the EPA publications "Improving POTW Performance Using the Composite Correction Approach," EPA CERI, October 1984, and "Retrofitting POTWs," EPA CERI, July 1989.

(3) Upon review of the CPE, the Cabinet/EPA may (1) approve, in whole or in part, or (2) provide comments to MSD for the purpose of identifying the deficiencies in the CPE. Upon receipt of Cabinet/EPA comments, MSD shall have sixty (60) days to revise and resubmit the CPE for review and approval, subject only to MSD's rights under the dispute resolution provisions of this Amended Consent Decree. Upon resubmittal, the Cabinet/EPA may (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the CPE is disapproved, then EPA may deem MSD to be out of compliance with this Amended Consent Decree for failure to timely submit the CPE and may assess stipulated penalties pursuant to this Amended Consent Decree. Upon Cabinet/EPA approval of all or any part of the CPE, the CPE, or any approved part of the CPE (provided that the approved part is not

dependent upon implementation of any part not yet approved), shall be deemed incorporated into this Amended Consent Decree as an enforceable requirement of this Amended Consent Decree.

c. **Composite Correction Plan ("CCP").** Concurrent with or as part of the final SSDP which is to be submitted on or before December 31, 2008 pursuant to paragraph 25.a.(3) above, MSD shall also submit to the Cabinet/EPA for review and approval a CCP for the Jeffersontown WWTP.

(1) The CCP shall include specific Type 1 and Type 2 remedial actions (as those terms are used in the EPA publications "Improving POTW Performance Using the Composite Correction Approach," EPA CERI, October 1984, and "Retrofitting POTWs," EPA CERI, July 1989).

(2) The Type 1 and 2 remedial actions shall be designed towards the goal of achieving KPDES permit compliance, including compliance with effluent limits and with the Bypass prohibition set forth at 40 C.F.R. § 122.41(m)(2) and (4) and 401 KAR 5:065, Section 1(13)(a) and (c), and eliminating factors which limit or which could limit the WWTP's operating efficiency.

(3) The CCP shall include an expeditious implementation and completion schedule for such Type 1 and 2 remedial actions not extending past December 31, 2011.

(4) The CCP shall also identify appropriate alternatives for both the complete elimination of the Jeffersontown WWTP and long term upgrades to the Jeffersontown WWTP should elimination not be practical or achievable.

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(5) The long term upgrade alternatives shall include:

A. Specific remedial actions, including capital improvements and Type 3 remedial actions (as that term is used in the EPA publications "Improving POTW Performance Using the Composite Correction Approach," EPA CERI, October 1984, and "Retrofitting POTWs," EPA CERI, July 1989), to achieve KPDES permit compliance, including compliance with effluent limits and with the Bypass prohibition set forth at 40 C.F.R. § 122.41(m)(2) and (4) and 401 KAR 5:065, Section 1(13)(a) and (c), and to eliminate all factors which limit or which could limit the WWTP's operating efficiency, by no later than December 31, 2015;

B. Specific remedial actions, including capital improvements, to address peak flow handling procedures and peak flow capacity of the WWTP to insure the application of Secondary Treatment to all flow by no later than December 31, 2015; and

(6) The CCP shall also include expeditious implementation and completion schedules not extending past December 31, 2015 for both (A) the elimination of the Jeffersontown WWTP and (B) the long term upgrades to the Jeffersontown WWTP should elimination not be practical or achievable.

(7) To the extent applicable, the CCP shall be consistent with the EPA publications "Improving POTW Performance Using the Composite Correction Approach," EPA CERI, October 1984, and "Retrofitting

POTWs," EPA CERI, July 1989.

(8) Upon review of the CCP for the Jeffersontown WWTP, the Cabinet/EPA may (1) approve, in whole or in part, or (2) provide comments to MSD for the purpose of identifying the deficiencies in the CCP. Upon receipt of Cabinet/EPA comments, MSD shall have sixty (60) days to revise and resubmit the CCP for review and approval, subject only to MSD's rights under the dispute resolution provisions of this Amended Consent Decree. Upon resubmittal, the Cabinet/EPA may (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the CPE is disapproved, then EPA may deem MSD to be out of compliance with this Consent Decree for failure to timely submit the CCP for the Jeffersontown WWTP and may assess stipulated penalties pursuant to this Consent Decree. Upon Cabinet/EPA approval of all or any part of the CCP for the Jeffersontown WWTP, the CCP, or any approved part of the CCP (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be incorporated into this Consent Decree by proposed material amendment under paragraph 60 of this Amended Consent Decree and, upon approval by the Court, become an enforceable requirement of this Amended Consent Decree.

(9) No later than March 31, 2010, MSD must select and commit to perform pursuant to this Amended Consent Decree one of the alternatives for either the elimination or long term upgrade of the Jeffersontown WWTP as set

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forth in the CCP that has been approved by Cabinet/EPA, and inform Cabinet/EPA of its selection.

d. **Service Connections.** Notwithstanding anything else in this Amended Consent Decree or in MSD's System Capacity Assurance Program (attached hereto as **Exhibit B**) to the contrary, upon the date of lodging of this Amended Consent Decree and until such time as the CCP for the Jeffersontown WWTP has been fully implemented and the Jeffersontown WWTP has either been eliminated or achieved full compliance with its KPDES permit, MSD agrees that it will only allow, permit or otherwise authorize new sewer service connections and/or increases in flow from any existing sewer service connection into the portion of the Sewer System providing flow into the Jeffersontown WWTP pursuant to the provisions of subparagraphs (1) and (2) below. For purposes of this paragraph only, the term "new sewer service connection" shall not include any existing sewer service connection approved by MSD prior to May 13, 2008 regardless of whether it has contributed flow to the Sewer System or that may need to change its tap in to the Sewer System through a differently located lateral line provided that there is no increase in flow as result of the change.

(1) MSD may allow new sewer service connections for each of the five (5) new sewer service applicants identified in **Exhibit E**, attached hereto, who, prior to the lodging of this Amended Consent Decree, had already applied, and deposited funds with MSD, for a new sewer service connection; provided, however, that MSD's allowance of these new sewer service connections shall be made pursuant to, and consistent with, MSD's

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System Capacity Assurance Program (attached hereto as **Exhibit B**) and is limited for each applicant to the respective remaining gallons per day of sewer flow subject to approval as set forth in **Exhibit E**.

(2) MSD may allow a new sewer service connection and/or an increase in flow from an existing sewer service connection only if as a "direct result" of the project involving the new connection or the increase in flow from an existing connection, an equal or greater amount of flow from an existing sewer service connection is eliminated prior to allowance of the new connection or the increase in flow from an existing connection. As a result, the allowance of the new connection or the increase in flow from an existing connection shall not increase the total flow of sewage into the portion of the Sewer System providing flow into the Jeffersontown WWTP. MSD may only allow any such new sewer service connection and/or increase in flow from an existing sewer service connection if such allowance is also done in accordance with MSD's System Capacity Assurance Program (attached hereto as **Exhibit B**) pursuant to which an additional amount of flow equal to three times that of the newly allowed increase in flow must have been eliminated by I/I removal activities within the portion of the Sewer System providing flow into the Jeffersontown WWTP. MSD agrees that it shall not count the decrease in flow from the eliminated, existing connection when calculating the amount of flow that must be eliminated pursuant to the implementation of the Capacity Assurance Program under the circumstances set forth in this subparagraph.

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If MSD allows a new sewer service connection or an increase in flow from an existing connection pursuant to this subparagraph, it shall submit to the Cabinet and EPA within thirty (30) days of such allowance a written demonstration that: such allowance did not increase the total flow of sewage into the portion of the Sewer System providing flow into the Jeffersontown WWTP; the elimination of flow from the existing connection was a "direct result" of the project involving the new connection or the increase in flow from an existing connection; and such allowance was also made consistent with MSD's System Capacity Assurance Program pursuant to which an additional amount of flow equal to three times that of the newly allowed increase in flow was eliminated by I/I removal activities within the portion of the Sewer System providing flow into the Jeffersontown WWTP. For purposes of this subparagraph, "direct result" shall mean that the elimination of the existing sewer service connection is an essential element of the project involving the new connection or the increase in flow from an existing connection. If MSD fails to submit an acceptable demonstration as required above, then EPA may deem MSD to be in violation of the provisions of this paragraph 26.d and may assess stipulated penalties against MSD pursuant to paragraph 40 of this Amended Consent Decree, subject only to MSD's rights under the dispute resolution provisions of this Amended Consent Decree.

27. **Comprehensive Performance Evaluation, Comprehensive Correction Plan and Elimination Plan for Certain WWTPs.**

a. **Comprehensive Performance Evaluation ("CPE").** Not later than March 31, 2009, MSD shall prepare and submit a CPE for Cabinet/EPA review and approval for the Lake Forest WWTP, the Timberlake WWTP and any WWTP that may receive additional flow from the Jeffersontown WWTP pursuant to an alternative set forth in the CCP for the Jeffersontown WWTP (excluding (1) dry weather flow sent to the MFWTP provided that the flow is within MFWTP's available dry weather capacity which is currently 120 million gallons per day and (2) wet weather flow sent to the West County WWTP provided that adequate plans for the West County WWTP to receive this additional flow are contained within the Cabinet/EPA approved, final SSDP).

(1) The purpose of this CPE is to identify any flow and/or loading rate restricted treatment process unit(s) at the WWTP which limit the plants' ability to comply with permit requirements, including those necessary to provide the required application of Secondary Treatment to all flows into the WWTP. The CPE shall also evaluate the cause of any effluent limit violation occurring at the WWTP within the last three (3) years.

(2) The CPE shall include an in-depth diagnostic evaluation of the capacity and operation of the WWTP in terms of its ability to meet all terms of the KPDES permits, including the Bypass prohibition set forth at 40 C.F.R. § 122.41(m)(2) and (4) and 401 KAR 5:065, Section 1(13)(a) and (c). The CPE shall also evaluate influent pumping capacities and the cause of any

SSOs occurring just upsewer from the WWTP. The CPE shall employ flow modeling and other appropriate techniques to evaluate WWTP capacity and operation, taking into account the net (cumulative) increase or decrease to the existing volume of wastewater introduced to the WWTP as a result of MSD's actual and anticipated increases in flow from the authorization of new sewer service connections and/or from existing sewer service connections, and the reduction of inflow and infiltration into the Sewer System. The CPE shall also identify the flow that the WWTP may take without experiencing a prohibited Bypass. The CPE shall establish procedures that MSD will use to prepare a CCP for each WWTP, as set forth below, based on the results of the CPE. MSD shall propose, as part of its CPE, a schedule for submission of a CCP for each WWTP, provided, that such schedule shall not exceed six (6) months after Cabinet/EPA approval of the CPE for that WWTP. To the extent applicable, the CPE shall be consistent with the EPA publications "Improving POTW Performance Using the Composite Correction Approach," EPA CERI, October 1984, and "Retrofitting POTWs," EPA CERI, July 1989.

(3) Upon review of the CPE, the Cabinet/EPA may (1) approve, in whole or in part, or (2) provide comments to MSD for the purpose of identifying the deficiencies in the CPE. Upon receipt of Cabinet/EPA comments, MSD shall have sixty (60) days to revise and resubmit the CPE for review and approval, subject only to MSD's rights under the dispute resolution provisions. Upon resubmittal, the Cabinet/EPA may (1) approve or (2)

disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the CPE is disapproved, then EPA may deem MSD to be out of compliance with this Amended Consent Decree for failure to timely submit the CPE and may assess stipulated penalties pursuant to this Amended Consent Decree. Upon Cabinet/EPA approval of all or any part of the CPE, the CPE, or any approved part of the CPE (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be deemed incorporated into this Amended Consent Decree as an enforceable requirement of this Amended Consent Decree.

b. **Composite Correction Plan ("CCP").** MSD shall prepare and submit for Cabinet/EPA review and approval a CCP for each WWTP identified in paragraph 27.a above pursuant to the schedule set forth in the CPE for that WWTP. The purpose of the CCP is to identify alternatives for the elimination of the WWTP or specific remedial actions, including capital improvements and other upgrades to the WWTP, to address the problems identified in the CPE.

(1) The CCP shall include specific Type 1 and Type 2 remedial actions (as those terms are used in the EPA publications "Improving POTW Performance Using the Composite Correction Approach," EPA CERI, October 1984, and "Retrofitting POTWs," EPA CERI, July 1989).

(2) The Type 1 and 2 remedial actions shall be designed towards the goal of achieving KPDES permit compliance, including compliance with effluent limits and with the Bypass prohibition set forth at 40 C.F.R. §

122.41(m)(2) and (4) and 401 KAR 5:065, Section 1(13)(a) and (c), and eliminating factors which limit or which could limit the WWTP's operating efficiency.

(3) The CCP shall include an expeditious implementation and completion schedule for such Type 1 and 2 remedial actions not extending past December 31, 2011.

(4) Except for the Timberlake WWTP, the CCP shall also include either a plan for the complete elimination of the WWTP or for specific long term upgrades to WWTP.

(5) For the Timberlake WWTP, the CCP shall only include a plan for the complete elimination of the WWTP. Notwithstanding MSD's commitment to eliminate the Timberlake WWTP pursuant to this paragraph, MSD agrees that on or before April 30, 2009 it shall install or provide the necessary equipment or technology designed to enable the Timberlake WWTP to comply with a monthly average effluent limitation for Total Phosphorous of one milligram per liter (1 mg/L); provided, however, if a more stringent effluent limitation for Total Phosphorous becomes effective pursuant to a KPDES permit, MSD agrees to install or provide the necessary equipment or technology designed to comply with the more stringent effluent limitation. In addition, on or before April 30, 2009, MSD agrees to sample its discharges from the Timberlake WWTP for Total Phosphorous at least once per week in accordance with the applicable test procedure for the analysis of pollutants set forth in 40

C.F.R. Part 136; provided, however, if a more stringent monitoring requirement for Total Phosphorous becomes effective pursuant to a KPDES permit, MSD agrees to comply with the more stringent monitoring requirement. In addition to any reporting requirement that may be set forth in any KPDES permit, MSD shall include in its quarterly reports to be submitted pursuant to paragraph 29 of this Amended Consent Decree a list of the date and results of MSD's sampling for Total Phosphorous and a list of occurrences when such sampling indicates a monthly average effluent characteristic for Total Phosphorous of greater than one milligram per liter (1 mg/L).

(6) If the CCP includes a plan for the complete elimination of the WWTP, then it shall also include an expeditious implementation and completion schedule not extending past December 31, 2015. The CCP for the Timberlake WWTP providing for the complete elimination of the Timberlake WWTP shall also include an expeditious implementation and completion schedule not extending past December 31, 2015. MSD agrees to use best efforts to begin upon the Cabinet/EPA's approval of the CCP for the Timberlake WWTP the process of obtaining any necessary easements that may be required for the implementation of the CCP for the Timberlake WWTP and agrees to provide quarterly updates on the progress of obtaining such easements in the quarterly reports to be submitted pursuant to paragraph 29 of this Amended Consent Decree.

(7) If the CCP includes a plan for long term upgrades, such plan shall include:

A. Specific remedial actions, including capital improvements and Type 3 remedial actions (as that term is used in the EPA publications "Improving POTW Performance Using the Composite Correction Approach," EPA CERI, October 1984, and "Retrofitting POTWs," EPA CERI, July 1989), to achieve KPDES permit compliance, including compliance with effluent limits and the Bypass prohibition set forth at 40 C.F.R. § 122.41(m)(2) and (4) and 401 KAR 5:065, Section 1(13)(a) and (c), and to eliminate all factors identified in the CPE which limit or which could limit the WWTP's operating efficiency, by no later than December 31, 2015;

B. Specific remedial actions, including capital improvements, to address the WWTP's peak flow handling procedures and peak flow capacity to insure the application of Secondary Treatment to all flow by no later than December 31, 2015; and

C. An expeditious implementation and completion schedule for such remedial actions not extending past December 31, 2015.

(8) To the extent applicable, the CCP shall be consistent with the EPA publications "Improving POTW Performance Using the Composite Correction Approach," EPA CERI, October 1984, and "Retrofitting POTWs," EPA CERI, July 1989.

(9) Upon review of the CCP for each WWTP, the Cabinet/EPA may (1) approve, in whole or in part, or (2) provide comments to MSD for the

purpose of identifying the deficiencies in the CCP. Upon receipt of Cabinet/EPA comments, MSD shall have sixty (60) days to revise and resubmit the CCP for review and approval, subject only to MSD's rights under the dispute resolution provisions of this Amended Consent Decree. Upon resubmittal, the Cabinet/EPA may (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the CCP is disapproved, then EPA may deem MSD to be out of compliance with this Amended Consent Decree for failure to timely submit the CCP and may assess stipulated penalties pursuant to this Amended Consent Decree. Upon Cabinet/EPA approval of all or any part of any CCP for the identified WWTP, the CCP, or any approved part of the CCP (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be deemed incorporated into this Amended Consent Decree as an enforceable requirement of this Amended Consent Decree.

c. **Elimination Plan.** Not later than March 31, 2009, MSD shall prepare and submit for Cabinet/EPA review and approval an Elimination Plan for the complete elimination of the Hunting Creek North WWTP, the Hunting Creek South WWTP, the Shadow Wood WWTP and the Ken Carla WWTP.

(1) The Elimination Plan shall include an expeditious implementation and completion schedule for the complete elimination of these WWTPs not extending past December 31, 2015. MSD agrees to use best efforts to begin upon the Cabinet/EPA's approval of the Elimination Plan the

process of obtaining any necessary easements that may be required for the implementation of the Elimination Plan for these WWTPs and agrees to provide quarterly updates on the progress of obtaining such easements in the quarterly reports to be submitted pursuant to paragraph 29 of this Amended Consent Decree.

(2) Upon review of the Elimination Plan, the Cabinet/EPA may (1) approve, in whole or in part, or (2) provide comments to MSD for the purpose of identifying the deficiencies in the Elimination Plan. Upon receipt of Cabinet/EPA comments, MSD shall have sixty (60) days to revise and resubmit the Elimination Plan for review and approval, subject only to MSD's rights under the dispute resolution provisions of this Amended Consent Decree. Upon resubmittal, the Cabinet/EPA may (1) approve or (2) disapprove and provide comments to MSD identifying the deficiencies. Upon such resubmittal, if the Elimination Plan is disapproved, then EPA may deem MSD to be out of compliance with this Amended Consent Decree for failure to timely submit the Elimination Plan and may assess stipulated penalties pursuant to this Amended Consent Decree. Upon Cabinet/EPA approval of all or any part of the Elimination Plan, the Elimination Plan, or any approved part of the Elimination Plan (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be deemed incorporated into this Amended Consent Decree as an enforceable requirement of this Amended Consent Decree.

(3) Notwithstanding MSD's commitment to eliminate the Hunting Creek North WWTP, the Hunting Creek South WWTP, the Shadow Wood WWTP and the Ken Carla WWTP pursuant to this paragraph, MSD agrees that on or before April 30, 2009 it shall install or provide the necessary equipment or technology designed to enable these WWTPs to comply with a monthly average effluent limitation for Total Phosphorous of one milligram per liter (1 mg/L); provided, however, if a more stringent effluent limitation for Total Phosphorous becomes effective pursuant to a KPDES permit, MSD agrees to install or provide the necessary equipment or technology designed to comply with the more stringent effluent limitation. In addition, on or before April 30, 2009, MSD agrees to sample its discharges from these WWTPs for Total Phosphorous at least once per week (except for the Ken Carla WWTP which shall be monitored once per month) in accordance with the applicable test procedure for the analysis of pollutants set forth in 40 C.F.R. Part 136; provided, however, if a more stringent monitoring requirement for Total Phosphorous becomes effective pursuant to a KPDES permit, MSD agrees to comply with the more stringent monitoring requirement. In addition to any reporting requirement that may be set forth in any KPDES permit, MSD shall include in its quarterly reports to be submitted pursuant to paragraph 29 of this Amended Consent Decree a list of the date and results of MSD's sampling for Total Phosphorous and a list of occurrences when such sampling indicates a monthly average effluent characteristic for Total

Phosphorous of greater than one milligram per liter (1 mg/L).

28. **Monitoring, Recordkeeping and Reporting at WWTPs.**

a. **Continuous Flow Monitoring.** MSD hereby agrees to immediately provide continuous flow monitoring at its WWTPs where required by its KPDES permits and to maintain records of such flow monitoring for a minimum of three (3) years in accordance with its KPDES permits. By September 30, 2008, MSD shall submit to the Cabinet/EPA a Monitoring and Recordkeeping Report, that includes in detail the following:

(1) The actions MSD has taken since October 12, 2006 at each WWTP to remedy any problems in complying with these KPDES monitoring and recordkeeping requirements;

(2) A description of the specific actions it currently and regularly performs at each WWTP to insure that such continuous flow monitoring and record keeping will occur;

(3) A representative sample of flow monitoring records from several WWTPs to exemplify compliance with these KPDES permit requirements.

The parties agree that if after review of MSD's Report, the Cabinet/EPA considers MSD to be in noncompliance with the flow monitoring or recordkeeping requirements of the KPDES permits, then MSD shall be out of compliance with this Amended Consent Decree, subject to MSD's rights under the dispute resolution provisions of this Amended Consent Decree. In addition, the parties agree that nothing in this Amended Consent Decree shall be construed to waive or limit any future remedy or cause of action by EPA and the Cabinet

against MSD for noncompliance with these KPDES permit requirements, and MSD reserves its defenses thereto, except that MSD shall not use this Amended Consent Decree as a defense. EPA and the Cabinet expressly reserve their rights at any time to take any other action deemed necessary, including the right to order all necessary remedial measures, assess penalties for violations, or recover all response costs incurred, and MSD reserves its defenses thereto, except that MSD shall not use this Amended Consent Decree as a defense.

b. **Bypass Reporting.** MSD shall report in the quarterly reports submitted to EPA and the Cabinet pursuant to paragraph 29 below all Bypasses at MSD's WWTPs prohibited pursuant to the provisions of 40 C.F.R. § 122.41(m)(2) and (4) or 401 KAR 5:065, Section 1(13)(a) and (c). In addition, MSD agrees to immediately comply with the advance notice requirements of any anticipated Bypass pursuant to 40 C.F.R. § 122.41(m)(3)(i) or 401 KAR 5:065, Section 1(13)(b)1 and with the 24-hour notice requirements of any unanticipated Bypasses pursuant to 40 C.F. R. § 122.41(m)(3)(ii) or 401 KAR 5:065, Section 1(13)(b)2. In addition, MSD agrees to report along with its discharge monitoring reports all instances of permit noncompliance not otherwise reported in accordance with 40 C.F.R. § 122.41(l)(7) and 401 KAR 5:065, Section 1(12)(g). MSD shall also report, monitor and maintain records of all Bypasses pursuant to the procedures set forth by MSD in its February 19, 2008 letter to EPA which is attached hereto and incorporated herein as **Exhibit D**, provided that such actions shall also be performed for all Bypasses (not just those occurring during wet weather) and at any WWTP that experiences a Bypass. The parties agree that any failure to

comply with any of the above requirements shall be a violation of this Amended Consent Decree, subject to MSD's rights under the dispute resolution provisions of this Amended Consent Decree. In addition, the parties agree that nothing in this Amended Consent Decree shall be construed to waive or limit any future remedy or cause of action by EPA and the Cabinet against MSD for noncompliance with these reporting requirements, and MSD reserves its defenses thereto, except that MSD shall not use this Amended Consent Decree as a defense. EPA and the Cabinet expressly reserve their rights at any time to take any other action deemed necessary, including the right to order all necessary remedial measures, assess penalties for violations, or recover all response costs incurred, and MSD reserves its defenses thereto, except that MSD shall not use this Amended Consent Decree as a defense.

c. **Effluent Sampling.** On July 1, 2008, MSD began to sample the effluent at the Jeffersontown WWTP seven (7) days a week for the parameters listed in the current KPDES permit and in accordance with the sample type and sample location indicated in the permit. MSD shall maintain all documentation regarding these sampling events for a minimum period of three (3) years. Nothing in this paragraph shall be construed to modify any of MSD's KPDES permits nor shall it in any way relieve MSD of its obligations to comply with its KPDES permits including its obligation to comply with the monitoring and sampling frequency requirements set forth in the Jeffersontown WWTP KPDES permit.

d. **Siphon Monitoring and Inspection.** On July 1, 2008, MSD began to electronically monitor the water surface elevation in the siphon head box

upstream of the headworks of the Jeffersontown WWTP. When the level monitor within the siphon head box reaches an elevation of 603.7 indicating that an SSO is likely to occur, MSD will begin to inspect the siphon head box and manholes on the gravity interceptor within two thousand feet of the headworks of the Jeffersontown WWTP. When these inspections identify an SSO, the occurrence will be reported in accordance with the approved SORP and documented in a written inspection report. Inspection reports for these SSOs shall include, without limitation, the following:

(1) The specific location of any SSO;

(2) The estimated volume of any SSO;

(3) The estimated start and ending time of day of any SSO;

(4) The time at which any alarm may have been activated or text message received to indicate the water level of the siphon head box;

(5) The time of day MSD personnel arrived at the location of any SSO;

(6) A description of the cause and impact of any SSO;

(7) A description of MSD's activities to minimize, respond to and clean up any SSO;

(8) The WWTP flow at the documented start time of any SSO;

(9) The total daily flow at the WWTP for the day of any inspection; and

(10) Rainfall records for day or days of the SSO event obtained from the automatic, telemetered rain gauge at the Jeffersontown WWTP.

MSD's inspection activities shall also continue to include the reporting, monitoring and record-keeping actions being performed with respect to the siphon

as identified by MSD in its February 19, 2008 letter to EPA which is attached hereto and incorporated herein as **Exhibit D**. MSD shall include the above-mentioned inspection reports, created as a result of an SSO, in the quarterly reports to be submitted by MSD to EPA and the Cabinet pursuant to paragraph 29 below.

REPORTING REQUIREMENTS

29. **Quarterly Reports**. MSD shall submit a quarterly report for the previous quarter no later than thirty (30) days after the end of each quarter, with the first such report to be submitted no later than January 31, 2006, to the Cabinet and EPA that describes its progress in complying with this Amended Consent Decree. The quarterly report shall include, at a minimum:

a. A detailed description of projects and activities conducted since the last reporting period to comply with the requirements of this Amended Consent Decree, in Gantt chart or similar format;

b. An accounting of the current quarter and the cumulative reductions in volume and in number of occurrences of Unauthorized Discharges from the SSS, CSS and WWTPs and discharges from MSD's CSO locations identified in its MFWTP KPDES permit;

c. All Bypasses at MSD's WWTPs prohibited pursuant to the provisions of 40 C.F.R. § 122.41(m)(2) and (4) or 401 KAR 5:065, Section 1(13)(a) and (c) that occurred in the previous quarter;

d. The anticipated projects and activities that will be performed in the upcoming quarter to comply with the requirements of this Amended Consent Decree, in

Gantt chart or similar format;

e. The sampling results of its monitoring for Total Phosphorous pursuant to paragraphs 27.b and c above during the previous quarter;

f. An update of MSD's efforts to obtain any necessary easements that may be required for the implementation of the CCP for the Timberlake WWTP and the Elimination Plan;

g. Inspection reports created pursuant to paragraph 28.d above during the previous quarter; and

h. Any additional information necessary to demonstrate that MSD is adequately implementing its Early Action Plan, Discharge Abatement Plans and paragraphs 26, 27 and 28 of this Amended Consent Decree.

30. **Annual Reports.** MSD has submitted annual reports on or before December 31, 2006 and December 31, 2007, and shall continue to submit an annual report for its previous fiscal year, with the next report due December 31, 2008 and each year thereafter by December 31. The annual reports shall include a summary of the CMOM Programs implementation pursuant to this Amended Consent Decree, including a comparison of actual performance with any performance measures that have been established.

PAYMENT OF CIVIL PENALTIES AND SUPPLEMENTAL ENVIRONMENTAL PROJECT

31. Pursuant to the original Consent Decree, MSD paid to the Cabinet a civil penalty in the amount of one million dollars ($1,000,000) to resolve the violations alleged in the Cabinet's and EPA's original complaints up through the date of entry of the original Consent Decree.

32. Within sixty (60) days of entry of this Amended Consent Decree, MSD shall pay to EPA a civil penalty in the amount of two hundred thirty thousand dollars ($230,000) to resolve the violations alleged in the Cabinet's and EPA complaint filed contemporaneously with this Amended Consent Decree from the date of entry of the original Consent Decree up through the date of entry of this Amended Consent Decree. Such payment shall be by electronic funds transfer in accordance with written instructions to be provided by the United States after entry of this Amended Consent Decree. The costs of such electronic transfer shall be the responsibility of MSD. MSD shall provide notice of such payment to the Parties in accordance with the Form of Notice provisions set forth in paragraph 51 of this Amended Consent Decree, referencing the case name, USAO File Number, and DOJ # 90-5-1-1-04258.

33. Pursuant to the original Consent Decree, MSD and the Cabinet agreed that MSD shall timely perform state supplemental environmental projects as set forth in Amended Exhibit A to the original Consent Decree pursuant the Court's Order dated March 15, 2007. MSD has already completed some of those state supplemental environmental projects set forth in **Exhibit F** attached hereto. The total expenditure for these state projects was not less than eight hundred thousand dollars ($800,000). MSD has submitted to the Cabinet a Completion Report for each of these state projects described in **Exhibit F**. The Completion Report contains the following information for each of these state projects:

a. A detailed description of the project as implemented;

b. A description of any operating problems encountered and the solutions thereto;

c. Itemized costs;

d. Certification that the state project has been fully implemented pursuant to **Exhibit F** and the provisions of the original Consent Decree;

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e. A description of the environmental and public health benefits resulting from implementation of the project.

Pursuant to this Amended Consent Decree, MSD and the Cabinet agree that MSD shall complete the remaining state supplemental environmental projects required by the original Consent Decree as set forth in **Exhibit G** attached hereto. As set forth in **Exhibit G** hereto, approximately seven hundred fifty thousand dollars ($750,000) has been spent to date on these remaining state projects. Upon completion, the total expenditure for these remaining state projects shall not be less than one million four hundred fifty thousand dollars ($1,450,000). Upon completion of these remaining state projects, the total expenditure on for all of the state projects required by the original Consent Decree and this Amended Consent Decree shall not be less than two million two hundred fifth thousand dollars ($2,250,000). MSD shall submit to the Cabinet a Completion Report for each of the state projects described in **Exhibit G** no later than sixty (60) days from the date for completion of the state project as set forth in **Exhibit G**. The Completion Report shall contain the following information for each of these state projects:

a. A detailed description of the project as implemented;

b. A description of any operating problems encountered and the solutions thereto;

c. Itemized costs;

d. Certification that the state project has been fully implemented pursuant to **Exhibit G** and the provisions of the original Consent Decree;

e. A description of the environmental and public health benefits resulting from implementation of the project.

34. Pursuant to this Amended Consent Decree and in consideration of the settlement with the Cabinet and EPA set forth in this Amended Consent Decree, MSD shall also timely

perform the Supplemental Environmental Project ("SEP") set forth in **Exhibit H** attached hereto. The total expenditure for this SEP shall not be less than four hundred thousand dollars ($400,000). MSD shall submit to the Cabinet and EPA a SEP Completion Report for the SEP described in **Exhibit H** no later than sixty (60) days from the date for completion of this SEP. The Report shall contain the following information for this SEP:

a. A detailed description of the SEP as implemented;

b. A description of any operating problems encountered and the solutions thereto;

c. Itemized costs;

d. Certification that the SEP has been fully implemented pursuant to **Exhibit H** and the provisions of this Amended Consent Decree;

e. A description of the environmental and public health benefits resulting from implementation of the SEP.

STIPULATED PENALTIES

35. For failure to timely submit the final SSDP, the Cabinet/EPA may jointly assess against MSD a stipulated penalty in the amount of three thousand dollars ($3,000). For each day MSD remains out of compliance for failure to timely submit the interim SSDP or the final SSDP, the Cabinet/EPA may jointly assess against MSD a stipulated penalty of an additional one hundred dollars ($100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

36. For failure to timely submit the final LTCP, the Cabinet/EPA may jointly assess against MSD a stipulated penalty in the amount of three thousand dollars ($3,000). For each day that MSD remains out of compliance for failure to timely submit the final LTCP, the Cabinet/EPA may jointly assess against MSD a stipulated penalty of an additional one hundred

dollars ($100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

37. For failure to timely submit the Process Control Program pursuant to paragraph 26.a of this Amended Consent Decree, EPA may assess against MSD a stipulated penalty in the amount of three thousand dollars ($3,000). For each day that MSD remains out of compliance for failure to timely submit the Process Control Program, EPA may assess against MSD a stipulated penalty of an additional one hundred dollars ($100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

38. For failure to timely submit the CPE for the Jeffersontown WWTP pursuant to paragraph 26.b of this Amended Consent Decree, EPA may assess against MSD a stipulated penalty in the amount of three thousand dollars ($3,000). For each day that MSD remains out of compliance for failure to timely submit this CPE, EPA may assess against MSD a stipulated penalty of an additional one hundred dollars ($100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

39. For failure to timely submit the CCP for the Jeffersontown WWTP pursuant to paragraph 26.c of this Consent Decree, EPA may assess against MSD a stipulated penalty in the amount of three thousand dollars ($3,000). For each day that MSD remains out of compliance for failure to timely submit this CPE, EPA may assess against MSD a stipulated penalty of an additional one hundred dollars ($100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

40. If MSD allows any increase in flow from new sewer service connections and/or from existing sewer service connections prohibited under paragraph 26.d of this Amended Consent Decree, then EPA may assess a stipulated penalty in the amount of twenty five thousand

dollars ($25,000) for each such sewer service connection. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

41. For failure to timely submit a CPE for a WWTP pursuant to paragraph 27.a of this Amended Consent Decree, EPA may assess against MSD a stipulated penalty in the amount of three thousand dollars ($3,000). For each day that MSD remains out of compliance for failure to timely submit this CPE, EPA may assess against MSD a stipulated penalty of an additional one hundred dollars ($100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

42. For failure to timely submit a CCP for a WWTP pursuant to paragraph 27.b of this Amended Consent Decree and/or the Elimination Plan pursuant to paragraph 27.c of this Amended Consent Decree, EPA may assess against MSD a stipulated penalty in the amount of three thousand dollars ($3,000). For each day that MSD remains out of compliance for failure to timely submit this CPE, EPA may assess against MSD a stipulated penalty of an additional one hundred dollars ($100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

43. In the event MSD fails to comply with the advance notice requirements for any anticipated Bypass pursuant to 40 C.F.R. § 122.41(m)(3)(i) or 401 KAR 5:065, Section 1(13)(b)1, EPA may assess against MSD a stipulated penalty in the amount of two thousand dollars ($2,000) for each failure. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

44. In the event MSD fails to comply with the twenty-four hour reporting requirements for any unanticipated Bypass pursuant to 40 C.F.R. § 122.41(m)(3)(ii) or 401 KAR 5:065, Section 1(13)(b)(2), EPA may assess against MSD a stipulated penalty in the amount of

two thousand dollars ($2,000) for each failure. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

45. For failure to timely submit a quarterly report or an annual report, the Cabinet/EPA may jointly assess against MSD a stipulated penalty in the amount of one thousand dollars ($1,000). This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

46. For the circumstances described below, the Cabinet/EPA may jointly assess against MSD stipulated penalties as follows:

a. For any dry weather discharge at a CSO occurring after September 30, 2006, two thousand dollars ($2,000) per discharge (provided, however, the Cabinet/EPA shall not assess stipulated penalties for those discharges resulting from MSD's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988, which shall be addressed under the interim and final LTCP). This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

b. For any Unauthorized Discharge (not including any effluent limitation violation of a WWTP KPDES permit and those Unauthorized Discharges described in paragraphs 46.c, d and e below) occurring after August 12, 2007, five hundred dollars ($500) per Unauthorized Discharge. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

c. For any Bypass at MSD's WWTPs prohibited pursuant to the provisions of 40 C.F.R. § 122.41(m)(2) and (4) or 401 KAR 5:065, Section 1(13)(a) and (c), five

hundred dollars ($500) per Bypass occurring after December 31, 2008. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed; provided, however, after December 31, 2015, this penalty may not be assessed for a particular Bypass if a penalty for that Bypass has been assessed under paragraph 46.e below.

d. For any Unauthorized Discharge within the Beechwood Village Area and at the Southeast Diversion at Fountain Court, five thousand dollars ($5,000) per Unauthorized Discharge occurring after December 31, 2011. For any Unauthorized Discharge within the Hikes Point Area and at the Highgate Springs Pump Station, five thousand dollars ($5,000) per Unauthorized Discharge occurring after December 31, 2013. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

e. For any Unauthorized Discharge at the Jeffersontown WWTP or occurring within two thousand feet of the headworks of the Jeffersontown WWTP including any Unauthorized Discharge from the siphon head box, five thousand dollars ($5,000) per Unauthorized Discharge occurring after December 31, 2015. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed; provided, however, that this penalty may not be assessed for a particular Bypass if a penalty for that Bypass has been assessed under paragraph 46.c above.

f. For each time samples taken after October 31, 2010 at the Timberlake WWTP, the Hunting Creek North WWTP, the Hunting Creek South WWTP, the Shadow Wood WWTP or the Ken Carla WWTP pursuant to paragraphs 27.b(5) or 27.c(3) of this Amended Consent Decree indicate a monthly average effluent

characteristic for Total Phosphorous of greater than one milligram per liter (1 mg/L), one thousand dollars ($1,000).

47. For each day that MSD fails to timely complete approved projects under the interim SSDP, the final SSDP, the final LTCP, or any approved amendments thereto, the Cabinet/EPA may jointly assess against MSD stipulated penalties for each such project as follows:

Period Beyond Completion Date	Penalty Per Violation Per Day
1 - 30 days	$1,000
31 - 60 days	$2,000
60 - 120 days	$3,000
more than 120 days	$5,000

48. For failure to complete the selected alternative in the CCP for the Jeffersontown WWTP on or before December 31, 2015, EPA may assess against MSD a stipulated penalty in the amount of one hundred thousand dollars ($100,000). For each month that MSD remains out of compliance for failure to complete the selected alternative in the CCP for the Jeffersontown WWTP, EPA may assess against MSD a stipulated penalty of an additional fifty thousand dollars ($50,000) per month. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

49. In the event MSD fails to satisfactorily complete the SEP as set forth in paragraph 34 and **Exhibit H** of this Amended Consent Decree, EPA may assess a stipulated penalty in the amount of one hundred fifty thousand dollars ($150,000); provided, however, if EPA determines that MSD (a) has made good faith efforts to complete the SEP and (b) has certified, with supporting documentation, that at least ninety percent (90%) of the money required to be spent

on the SEP was expended, MSD shall not be liable for this stipulated penalty. In the event MSD spends less than ninety percent (90%) of the money required to be spent on the SEP but otherwise satisfactorily completes the SEP as set forth in paragraph 34 and **Exhibit H** of this Amended Consent Decree, EPA may assess a stipulated penalty equal to the difference between MSD's documented SEP expenditures and the amount of money required to be spent on the SEP. In the event MSD fails to submit the SEP Completion Report in accordance with the provisions of paragraph 34 of this Amended Consent Decree, EPA may assess a stipulated penalty in the amount of one thousand dollars ($1,000) for each day after the report was originally due until the report is satisfactorily submitted.

50. MSD shall tender all stipulated penalty payments specified above within ten (10) days of receipt of written notice that such penalty has been assessed. Fifty (50) percent of each payment due pursuant to paragraphs 35 through 48 shall be paid to the Cabinet and fifty (50) percent shall be paid to EPA. Each payment due pursuant to paragraph 49 shall be paid to EPA MSD shall tender all penalty payments due to the Cabinet by certified check, cashier's check or money order, payable to the KENTUCKY STATE TREASURER. Payment shall be tendered to the Kentucky Division of Enforcement, 300 Fair Oaks Lane, Frankfort, Kentucky 40601; note Case No. DOW-32604-056. MSD shall tender all penalty payments due to EPA by electronic funds transfer, in accordance with written instructions to be provided by EPA after entry of this Amended Consent Decree. The costs of such electronic transfer shall be the responsibility of MSD. Notice of such payment shall be provided under the Form of Notice provision in this Amended Consent Decree.

FORM OF NOTICE

51. Unless otherwise specified, or as may be changed from time to time, all reports,

notices, or any other written communications required to be submitted under this Amended Consent Decree shall be sent to the respective parties at the following addresses:

As to the Commonwealth of Kentucky:

Director, Division of Enforcement
Department of Environmental Protection
300 Fair Oaks Lane
Frankfort, Kentucky 40601

For verbal notifications: Mark Cleland, Division of Enforcement, (502) 564-2150 (subject to change on written notice to MSD).

As to EPA:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Reference DOJ Case No. 90-5-1-1-08254

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

For verbal notifications: Doug Mundrick, Chief, Water Programs Enforcement Branch, (404) 562-9328 (subject to change on written notice to MSD).

As to MSD:

H. J. Schardein, Jr.
Executive Director
Louisville and Jefferson County Metropolitan Sewer District
700 West Liberty Street
Louisville, Kentucky 40203

Laurence J. Zielke
Special Counsel to the Board
Zielke Law Firm, PLLC
1250 Meidinger Tower
462 South Fourth Avenue
Louisville, Kentucky 40202

Notifications to, or communications with, the parties shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested, or deposited with an overnight mail/delivery service.

COSTS OF SUIT

52. The parties shall bear their own costs and attorneys' fees with respect to matters related to this Amended Consent Decree. In the event, however, that the Cabinet or EPA must enforce this Amended Consent Decree, MSD shall pay all attorneys' fees and costs incurred by the Cabinet or EPA if the Cabinet or EPA prevails on the issue for which enforcement is sought; this obligation shall not apply to any procedures that may arise under the dispute resolution provisions of this Amended Consent Decree.

REVIEW OF SUBMITTALS

53. The Cabinet/EPA agree to use their best efforts to expeditiously review and comment on submittals that MSD is required to submit to the Cabinet/EPA for approval pursuant to the terms and provisions of this Amended Consent Decree. If the Cabinet/EPA cannot

complete their review of a submittal within sixty (60) days of receipt of the submittal, or within the time period otherwise provided in this Amended Consent Decree, the Cabinet/EPA shall so notify MSD before the expiration of the applicable review period. If the Cabinet/EPA fail to approve, provide comments or otherwise act on a submittal within sixty (60) days of receipt of the submittal, or within the time period otherwise provided in this Amended Consent Decree, any subsequent milestone date dependent upon such action by the Cabinet/EPA shall be extended by the number of days beyond the applicable review period that the Cabinet/EPA use to act on that submittal.

CERTIFICATION OF SUBMISSIONS

54. In all notices, documents or reports submitted pursuant to this Amended Consent Decree, MSD shall, by a responsible party of MSD, as defined by 40 C.F.R. §122.22, sign and certify each such notice, document and report as follows:

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

RIGHT OF ENTRY

55. The Cabinet and EPA and their authorized representatives and contractors shall have authority at all times, upon the presentation of proper credentials, to enter the premises of MSD to:

a. Monitor the work required by this Amended Consent Decree;

b. Verify any data or information submitted to the Cabinet or EPA;

c. Obtain samples from any portion of the SSS, CSS or WWTPs;

d. Inspect and evaluate any portions of the SSS, CSS or WWTPs;

e. Inspect and review any records required to be kept under the terms and conditions of this Amended Consent Decree or any KPDES permit, the Act and KRS Chapter 224; and

f. Otherwise assess MSD's compliance with state and federal environmental laws and this Amended Consent Decree.

The rights created by this paragraph are in addition to, and in no way limit or otherwise affect, the authority of the Cabinet or EPA to conduct inspections, to require monitoring and to obtain information from MSD as authorized by law.

RECORD RETENTION

56. MSD shall retain all data, documents, plans, records and reports that relate to MSD's performance under this Amended Consent Decree which are in the possession, custody, or control of MSD or its consultants or contractors. MSD shall retain all such materials for five (5) years from the date of origination. Drafts of final documents, plans, records, or reports do not need to be retained. This paragraph does not limit or affect any duty or obligation of MSD to maintain records or information required by any KPDES permit. At the conclusion of this retention period MSD shall notify the Cabinet and EPA at least one-hundred and twenty (120) days prior to the destruction of any such materials, and upon request by any of these parties, MSD shall deliver any such materials to that party.

MISCELLANEOUS PROVISIONS

57. This Amended Consent Decree is designed to resolve the civil claims for penalties of the Cabinet and EPA for the violations of KRS Chapter 224 and the Act as alleged in the complaints and the amended complaint filed by the Cabinet and EPA up through the date of entry of this Amended Consent Decree. The Cabinet and EPA have relied upon the factual representations of MSD. Nothing contained herein shall be construed to waive or to limit any remedy or cause of action by the Cabinet and EPA based on statutes or regulations under applicable jurisdiction and MSD reserves its defenses thereto, except that MSD shall not use this Amended Consent Decree or any subsequent amendments to this Amended Consent Decree as a defense. The Cabinet and EPA expressly reserve their rights at any time to issue administrative orders and to take any other action deemed necessary, including the right to order all necessary remedial measures, assess penalties for violations, or recover all response costs incurred, and MSD reserves its defenses thereto, except that MSD shall not use this Amended Consent Decree or any subsequent amendments to this Amended Consent Decree as a defense.

58. This Amended Consent Decree or any subsequent amendments to this Amended Consent Decree shall not prevent the Cabinet and EPA from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to MSD. MSD reserves its defenses thereto, except that MSD shall not use this Amended Consent Decree or any subsequent amendments to this Amended Consent Decree as a defense.

59. MSD waives its right to any hearing on the matters admitted herein. However, failure by MSD to comply strictly with any or all of the terms of this Amended Consent Decree or any subsequent amendments to this Amended Consent Decree shall be grounds for the Cabinet and EPA to seek enforcement of this Amended Consent Decree or any subsequent amendments to this Amended Consent Decree in this Court and to pursue any other appropriate

administrative or judicial action under the Act or KRS Chapter 224, and the regulations promulgated pursuant thereto.

60. The terms and conditions stated herein are intended to be implemented as a whole and may not be challenged independently. Except as set forth below, this Amended Consent Decree may not be materially amended or modified except by written agreement of the parties, and approval of this Court. Any material modification of this Amended Consent Decree shall be effective upon approval of the Court. Non-material modifications of the Amended Consent Decree which do not significantly alter the requirements of this Amended Consent Decree may be made in writing by the parties. The parties agree that any future agreed upon changes to **Exhibit D** attached hereto shall be considered non-material modifications of this Amended Consent Decree which may be made in writing by the parties.

61. It is the intention of the parties to this Amended Consent Decree that MSD shall have the opportunity, consistent with applicable law, to conform compliance with this Amended Consent Decree to any modifications in EPA's regulations or national policies governing Bypasses that may occur after lodging of this Amended Consent Decree. Consequently, upon issuance of any new EPA final regulation (as promulgated in the Federal Register) or national policy governing Bypasses, MSD may request modification of this Amended Consent Decree (including requests for extensions of time) from the Cabinet/EPA to conform this Consent Decree to such regulation or national policy. For the purposes of this paragraph, "national policy" refers to a formal written policy statement issued by EPA's Assistant Administrator for the Office of Water and EPA's Assistant Administrator for the Office of Enforcement and Compliance Assurance. Upon MSD's request, the parties shall discuss the matter. If the parties agree on a proposed modification to this Amended Consent Decree, they shall prepare a joint

motion to the Court requesting such modification. If the parties do not agree, and MSD still believes modification of this Amended Consent Decree is appropriate, it may file a motion seeking such modification in accordance with Federal Rule of Civil Procedure 60(b); provided, however, that nothing in this paragraph is intended to waive the Cabinet's and EPA's rights to oppose such motion and to argue that such modification is unwarranted. Following the filing of a motion under Rule 60(b), any stipulated penalties that may be assessed shall accrue due to MSD's failure, if any, to continue performance of obligations under this Amended Decree that are necessarily the subject of the Rule 60(b) motion; provided, however, that such penalties need not be paid unless the Court resolves the Rule 60(b) motion in the Cabinet/EPA's favor. If the Court resolves the motion in MSD's favor, MSD shall comply with this Amended Consent Decree as modified.

62. The Cabinet and EPA do not, by consent to the entry of this Amended Consent Decree, warrant or aver in any manner that MSD's complete compliance with this Amended Consent Decree will result in compliance with the provisions of the Act or KRS Chapter 224, and the regulations promulgated pursuant thereto, nor with any permit. Notwithstanding the Cabinet's and EPA's review and approval of any plans formulated pursuant to this Amended Consent Decree, MSD shall remain solely responsible for compliance with the terms of the Act and KRS Chapter 224, and the regulations promulgated pursuant thereto, this Amended Consent Decree and any permit and compliance schedule requirements. This Amended Consent Decree is not and shall not be construed as a permit, nor a modification of any existing permit, issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, nor shall it in any way relieve MSD of its obligations to obtain permits for its WWTPs and related operations or facilities and to comply with the requirements of any KPDES permit or with any other applicable state or federal law or

regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable state or federal laws and regulations.

63. The provisions of this Amended Consent Decree shall apply to and be binding upon MSD. The acts or omissions of MSD's officers, directors, agents, and employees shall not excuse MSD's performance of any provisions of this Amended Consent Decree. The Cabinet and EPA reserve the right to seek enforcement of this Amended Consent Decree against the successors and assigns of MSD. MSD shall give notice of this Amended Consent Decree to any purchaser, lessee or successor-in-interest prior to the transfer of ownership and/or operation of any part of the now-existing facility occurring prior to termination of this Amended Consent Decree, shall notify the Cabinet and EPA that such notice has been given, and shall follow all statutory and regulatory requirements for a transfer. Whether or not a transfer takes place, MSD shall remain fully responsible for payment of all civil penalties, stipulated/performance penalties, and for performance of all remedial measures identified in this Amended Consent Decree.

64. This Amended Consent Decree shall not be contingent on the receipt of federal or state funds.

65. Upon entry of this Amended Consent Decree, MSD and the Cabinet hereby agree that this Amended Consent Decree shall serpersede and replace all of MSD's obligations set forth in the Agreed Order, filed August 4, 1999 in the Cabinet's Office of Administrative Hearings, and the Amended Agreed Order, filed February 24, 2005 in the Cabinet's Office of Administrative Hearings, both having file numbers DOW-22824-042, DOW-23166-042, DOW-24095-042 and DOW-24270.

PUBLIC COMMENTS

66. The parties agree and acknowledge that final approval of this Amended Consent

Decree by the Cabinet and EPA, and entry of this Amended Consent Decree by the Court, are subject to the requirements of 28 C.F.R. §50.7, which provides for notice of the lodging of this Amended Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. MSD hereby agrees not to withdraw from, oppose entry of, or challenge any provision of this Amended Consent Decree, unless the Cabinet or EPA has notified MSD in writing that it no longer supports entry of the Amended Consent Decree.

FORCE MAJEURE

67. MSD shall perform the requirements of this Amended Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a force majeure, in which event the delay in performance shall be excused and no performance or stipulated penalty shall be assessed. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of MSD, or MSD's consultants and contractors, which could not be overcome by due diligence, and which delays or prevents performance by a date required by this Amended Consent Decree. Force majeure events do not include unanticipated or increased costs of performance, changed economic or financial conditions, the failure by a contractor to perform, or the failure by a supplier to deliver.

68. MSD shall notify the Cabinet's Director of the Enforcement Division and EPA's Chief of the Water Programs Enforcement Branch by telephone by the end of the next business day and in writing within ten (10) business days after it becomes aware of events which it knows or should know constitute a force majeure. The notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to minimize the delay and an estimated timetable for implementation of these measures.

Failure to comply with the notice provision of this paragraph shall be grounds for the Cabinet and EPA to deny an extension of time for performance. If an event is anticipated to occur which may cause a delay in meeting the requirements of this Amended Consent Decree, MSD shall notify the Cabinet's Director of the Enforcement Division and EPA's Chief of the Water Programs Enforcement Branch by telephone by the end of the next business day and in writing within ten (10) business days of learning of the possibility of a force majeure event, if the event has not already occurred. The Cabinet or EPA will respond in writing to any written notice received.

69. If MSD reasonably demonstrates to the Cabinet and EPA that the delay has been or will be caused by a force majeure event, the Cabinet and EPA will extend the time for performance for that element of the Amended Consent Decree for a period not to exceed the delay resulting from such circumstances.

70. If a dispute over the occurrence or impact of a force majeure event cannot be resolved, MSD may invoke its rights under the dispute resolution provisions of this Amended Consent Decree. In any such dispute, MSD shall have the burden of proof that a violation of this Amended Consent Decree was caused by a force majeure event.

CONTINUING JURISDICTION, TERMINATION AND AMENDMENTS TO CONSENT DECREE

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

72. This Amended Consent Decree is subject to termination on the date that MSD

certifies that it has:

a. Completed all SEPs,

b. Paid all penalties and stipulated penalties due,

c. Submitted and received approval of the Early Action Plan; the interim SSDP; the final SSDP; the interim LTCP; the final LTCP; the Process Controls Program for the Jeffersontown WWTP; the CPE and CCP for the Jeffersontown WWTP; and the CPEs, CCPs and Elimination Plan for the other WWTPs pursuant to paragraph 27 of this Amended Consent Decree, and

d. Completed all work and implemented all the requirements in the Early Action Plan; the interim SSDP; the final SSDP; the interim LTCP; the final LTCP; the Process Controls Program for the Jeffersontown WWTP; the CPE and CCP for the Jeffersontown WWTP; and the CPEs, CCPs and Elimination Plan for the other WWTPs pursuant to paragraph 27 of this Amended Consent Decree, as required under this Amended Consent Decree or any additional amendments to this Amended Consent Decree.

The Cabinet/EPA's determination that this Amended Consent Decree or any subsequent amendment to this Amended Consent Decree should be terminated shall be based on a consideration of whether all of the four (4) requirements listed above have occurred.

73. MSD may request that the Cabinet/EPA make a determination that this Amended Consent Decree be terminated. Any such request shall be in writing and shall include a certification that the four (4) requirements listed in paragraph 72 above have been met. MSD shall serve a copy of any such request on the Cabinet through the office of its Secretary and EPA through the Director of the EPA Region 4 Water Division.

74. If the Cabinet/EPA agree that MSD has met all four of the requirements listed above, the Cabinet/EPA and MSD shall file a joint motion with the Court seeking an order terminating the Amended Consent Decree or any subsequent amendment thereto. If the

Cabinet/EPA determine not to seek termination of this Amended Consent Decree or any subsequent amendment thereto because they determine all of the four requirements listed in paragraph 72 above were not met, they shall so notify MSD in writing. The Cabinet/EPA's notice shall summarize the basis for its decision and describe the actions necessary to achieve final compliance. If MSD disagrees with any such determination by the Cabinet/EPA, it must invoke the dispute resolution procedures described in paragraphs 75 and 76 below before filing any motion with the Court regarding the disagreement.

DISPUTE RESOLUTION

75. Any dispute that arises under or with respect to this Amended Consent Decree shall in the first instance be the subject of informal negotiations between the parties. MSD shall invoke the informal dispute resolution procedures by notifying all other parties in writing of the matter(s) in dispute and of MSD's intention to resolve the dispute under these paragraphs 75 and 76. The notice shall:

a. Outline the nature and basis of the dispute;

b. Include MSD's proposed resolution;

c. Include all information or data relating to the dispute and the proposed resolution; and

d. Request negotiations pursuant to this paragraph to informally resolve the dispute.

The parties shall then attempt to resolve the dispute informally for a period of thirty (30) days from the date of the notice with the goal of resolving the dispute in good faith, without further proceedings. The period for informal negotiations shall not exceed thirty (30) days from the date of the original notice of this dispute, unless the parties otherwise agree in writing to extend that period.

76. If informal negotiations are unsuccessful, the position of the Cabinet and EPA shall control unless, within thirty (30) days after the conclusion of the informal negotiation period, MSD seeks judicial review of the dispute by filing with the Court and serving on the Cabinet and EPA a motion requesting judicial resolution of the dispute. The motion shall contain a written statement of MSD'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 Amended Consent Decree. The Cabinet and EPA shall respond to MSD's motion within thirty (30) days. Either party may request an evidentiary hearing for good cause. The burden of proof is on MSD to demonstrate that its position on the matter in dispute meets the objectives of the Amended Consent Decree, any subsequent amendment thereto, the Act and KRS Chapter 224. If the dispute is not resolved within the schedule identified for orderly implementation of the Amended Consent Decree in MSD's motion, MSD may request additional time beyond compliance schedules or deadlines in this Amended Consent Decree that are dependent upon the duration and/or resolution of the dispute.

SIGNATORIES

77. The signatories for the Cabinet and EPA certify that they are fully authorized to enter into the terms and conditions of this Amended Consent Decree and to execute and legally bind such parties to this document.

78. MSD's agent identified on the attached signature page is authorized to accept service of process by mail on MSD's behalf with respect to all matters arising under or related to this Amended Consent Decree. MSD agrees to accept service of process in that manner and to waive the formal service and notice requirements set forth in Section 505 of the Act, 33 U.S.C. § 1365, and Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this

Court, including but not limited to service of a summons.

SO ORDERED, this 10th day of April, 200__.

UNITED STATES ~~DISTRICT~~ JUDGE

THE UNDERSIGNED Party enters into this Amended Consent Decree, subject to the public notice requirements of 28 C.F.R. §50.7, and submits it to the Court for entry.

FOR THE COMMONWEALTH OF KENTUCKY,
ENERGY AND ENVIRONMENT CABINET

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THE UNDERSIGNED Party enters into this Amended Consent Decree, subject to the public notice requirements of 28 C.F.R. §50.7, and submits it to the Court for entry.

FOR THE UNITED STATES OF AMERICA

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THE UNDERSIGNED Party enters into this Amended Consent Decree, subject to the public notice requirements of 28 C.F.R. §50.7, and submits it to the Court for entry.

FOR LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT

BEVERLY WHEATLEY
Chairman of the Board

H. J. SCHARDEIN, JR.
Executive Director

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