UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Plaintiff, v. THE MUNICIPALITY OF SAN JUAN, THE PUERTO RICO DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES, THE PUERTO RICO DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS, THE PUERTO RICO HIGHWAY AND TRANSPORTATION AUTHORITY, AND THE COMMONWEALTH OF PUERTO RICO, Defendants.	)	CIVIL ACTION NO. 3:14-cv-1476-CCC

CONSENT DECREE

Department of Transportation and Public Works
and
Highway and Transportation Authority

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BACKGROUND

WHEREAS, Plaintiff, the United States of America, at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a First Amended Complaint (the "Complaint") alleging that Defendants the Municipality of San Juan ("San Juan"), the Department of Natural and Environmental Resources of the Commonwealth of Puerto Rico ("DNER"), the Department of Transportation and Public Works of the Commonwealth of Puerto Rico ("DTPW"), and the Puerto Rico Highway and Transportation Authority ("HTA") (hereinafter, collectively, "Defendants") violated Section 301 of the Clean Water Act (the "Act"), 33 U.S.C. §§ 1311, and regulations promulgated thereunder;

WHEREAS, in its Complaint, the United States also alleges that Defendants San Juan, DTPW, and HTA violated the terms and conditions of the National Pollutant Discharge Elimination System ("NPDES") General Permit for Discharges from Small Municipal Separate Storm Sewer Systems, Permit Number PRR040000/PRR04000F ("MS4 Permit"), dated November 6, 2006;

WHEREAS, EPA published Notice of Availability of the Draft NPDES General Permit for Small Municipal Separate Storm Sewer Systems in the Commonwealth of Puerto Rico and Federal Facilities within the Commonwealth of Puerto Rico on June 11, 2014 (79 Fed. Reg. 33548);

WHEREAS, in its Complaint, the United States also alleges that all Defendants are liable to the United States for injunctive relief addressing an imminent and substantial endangerment, pursuant to Section 504, of the Act, 33 U.S.C. § 1364;

WHEREAS, the Commonwealth of Puerto Rico (the "Commonwealth") is a "State" within the meaning of Section 502(3) of the Act, 33 U.S.C. § 1362(3);

WHEREAS, San Juan is a municipality organized under the laws of the Commonwealth;

WHEREAS, DNER is an executive department of the Commonwealth, created pursuant to 3 L.P.R.A. §§ 151 et seq. and lacks the legal authority to sue and be sued;

WHEREAS, DTPW is an executive department of the Commonwealth, created pursuant to Section 6 of Article IV of the Constitution of the Commonwealth, and lacks the legal authority to sue and be sued;

WHEREAS, the Secretary of the DTPW is expressly authorized to sign contracts and agreements on behalf of the Commonwealth, 3 L.P.R.A. § 412(2); including agreements with federal agencies of the Government of the United States of America, 3 L.P.R.A. § 413a(a);

WHEREAS, as an executive department of the State, DTPW meets the definition of "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5);

WHEREAS, HTA is a public corporation of the Commonwealth, pursuant to 9 L.P.R.A. § 2002, and possesses the legal capacity to sue and be sued;

WHEREAS, because HTA is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4), the Commonwealth is also joined in this action pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e);

WHEREAS, pursuant to the inherent powers and faculties granted by the enabling act of the DTPW, with the consent of the Attorney General of the Commonwealth pursuant to 3 L.P.R.A. § 292b, the Secretary of the DTPW is empowered to sign any settlement documents on behalf of the Commonwealth;

WHEREAS, pursuant to 3 L.P.R.A § 292a(1), the Attorney General of the Commonwealth is the legal counsel of the Commonwealth, its agencies, and the People of Puerto Rico in civil, criminal, administrative and special suits and proceedings to which it is a party or which are brought before the courts or other forums in or outside of Puerto Rico. Furthermore, the Attorney General shall exercise this representation personally or through designated attorneys;

WHEREAS, pursuant to 3 L.P.R.A. §292a(5), public corporations may request legal representation from the Attorney General of the Commonwealth, which HTA requested in the present action;

WHEREAS, DNER owns and operates three storm water pump stations in and around San Juan, Puerto Rico, including the Baldorioty de Castro, De Diego, and Barriada Figueroa ("Stop 18") Pump Stations (collectively, the "DNER Pump Stations");

WHEREAS, the flow to and transferred by the three DNER Pump Stations addressed in the Complaint and in this Consent Decree originates from areas within San Juan and in some instances adjacent municipalities;

WHEREAS, the DNER Pump Stations are part of the storm water conveyance management system for the San Juan municipal area and were constructed for the purpose of conveying storm water only to prevent flooding and protect life and property in the affected areas;

WHEREAS, San Juan owns and operates a municipal separate storm sewer system ("MS4") in San Juan, Puerto Rico, a portion of which flows into the DNER Pump Stations and other outfalls, addressed in the Complaint and in this Consent Decree;

WHEREAS, DTPW/HTA presently own and operate an MS4 ("DTPW/HTA's MS4") in Puerto Rico, a portion of which flows into San Juan's MS4 and/or the DNER Pump Stations, addressed in the Complaint and in this Consent Decree;

WHEREAS, the United States alleges that San Juan has, during the relevant time period, discharged pollutants not authorized to be discharged under the MS4 Permit in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a);

WHEREAS, the United States alleges that DNER discharged untreated sewage, including but not limited to fecal coliform, oil and grease, metals and other "pollutants" from DNER's Pump Stations in violation of Sections 301(a) of the Act, 33 U.S.C. §§ 1311(a);

WHEREAS, the United States alleges that DTPW and HTA have, during the relevant time period, discharged pollutants not authorized to be discharged under the MS4 Permit in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a);

WHEREAS, EPA further alleges that the Complaint states claims upon which relief may be granted against DTPW and HTA under Sections 301 and 504 of the Act, 33 U.S.C. §§ 1311 and 1364;

WHEREAS, DTPW and HTA maintain that they have taken actions toward achieving compliance with the Act;

WHEREAS, the express purpose of the Parties entering into this Consent Decree is to resolve the claims alleged in the Complaint against DTPW and HTA, with the goal of bringing DTPW and HTA into compliance with the Act;

WHEREAS, DTPW and HTA have provided financial documentation to the United States to verify DTPW's and HTA's assertions of financial hardship. Taking into consideration the economic impact of a civil penalty and DTPW's and HTA's documented inability to pay a penalty, the United States is waiving the civil penalty associated with the violations alleged in the Complaint;

WHEREAS, DTPW hereby assumes responsibility and liability for compliance with all provisions of this Consent Decree except for those provisions set forth in Paragraph 9.b in the event that HTA submits a Notice of Intent to be covered under the new MS4 General Permit on its own, and those provisions set forth in Paragraph 11.c regarding the Barrio Obrero Marina Vacuum Sewer System; and HTA assumes responsibility and liability for compliance with the provisions set forth in Paragraph 9.b in the event that HTA submits a Notice of Intent to be covered under the new MS4 General Permit on its own, and the provisions set forth in Paragraph 11.c regarding the Barrio Obrero Marina Vacuum Sewer System; notwithstanding the foregoing, the United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree against DTPW or HTA or both.

WHEREAS, pursuant to the above paragraph, HTA may request an early release from this Consent Decree in accordance with the procedures in Section XIX hereunder.

WHEREAS, Plaintiff, the United States of America and Defendants DTPW and HTA, without making any admission of fact or law, or evidence of same, or of any violation of any permit, law or regulation, agree that: (i) settlement of these unresolved matters in accordance

with this Consent Decree is in the best interests of the United States, DTPW, HTA, and of the public; and (ii) entry of this Consent Decree without further litigation is the most expeditious, economic and appropriate means of resolving this action to the extent set forth herein;

WHEREAS, the Parties have examined and are in agreement with the terms and conditions set forth in this Consent Decree;

NOW, THEREFORE, without admission by DTPW and HTA of the non-jurisdictional allegations in the Complaint and upon consent of the Parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

OBJECTIVES

It is the express purpose of the Parties in entering into this Consent Decree to further the objectives of the Act, as enunciated at Section 101, 33 U.S.C. § 1251, to eliminate unauthorized discharges to waters of the United States, for DTPW and HTA to achieve compliance with the Act, for DTPW/HTA to take such actions to mitigate the imminent and substantial endangerment, and for DTPW/HTA, as part of a comprehensive initiative with the Municipality of San Juan, DNER, and others, to eliminate raw sewage in the flows from the DTPW/HTA and San Juan municipal separate storm sewer systems. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing DTPW and HTA to come into and remain in full compliance with the Act.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter and over the Parties to this action pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b) and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355. DTPW and HTA shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c) and § 1395(a).

2. DTPW and HTA agree that the Complaint states claims upon which relief may be granted pursuant to Sections 301 and 504 of the Act, 33 U.S.C. §§ 1311 and 1364.

II. PARTIES

3. The Parties to this Consent Decree are as follows:

a. The United States, being the Plaintiff United States of America, on behalf of the United States Environmental Protection Agency,

b. The Commonwealth, acting through DTPW, an executive department of the State. DTPW hereby assumes responsibility and liability for compliance with all provisions of this Consent Decree except for those provisions set forth in Paragraph 9.b in the event that HTA submits a Notice of Intent to be covered under the new MS4

General Permit on its own, and those provisions set forth in Paragraph 11.c regarding the Barrio Obrero Marina Vacuum Sewer System. Notwithstanding the foregoing, the United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree against DTPW or HTA or both,

c. HTA, a public corporation of the Commonwealth and an operating authority affiliated with DTPW. HTA assumes responsibility and liability for compliance with the provisions set forth in Paragraph 9.b in the event that HTA submits a Notice of Intent to be covered under the new MS4 General Permit on its own, and the provisions set forth in Paragraph 11.c regarding the Barrio Obrero Marina Vacuum Sewer System. Notwithstanding the foregoing, the United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree against DTPW or HTA or both, and

d. Because HTA is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4), the Commonwealth is also joined as a party in conformance with the requirements of Section 309(e) of the Act, 33 U.S.C. § 1319(e). Pursuant to said Section 309(e) of the Act, the United States specifically reserves its claims against the Commonwealth, and the Commonwealth reserves any and all defenses any such claims brought under said Section 309(e).

e. HTA may request an early release from this Consent Decree in accordance with the procedures in Section XIX hereunder, upon completion of the activities set forth in Paragraph 3.c above.

III. APPLICATION AND BINDING EFFECT

4. The provisions of this Consent Decree shall apply to, inure to the benefit of, and be binding upon the United States, on behalf of EPA, and DTPW and HTA, their officers, directors, employees, successors in interest and assigns, and upon all persons, agents, firms, subsidiaries, divisions, and corporations acting under or for them, including any entity which may enter into a contract with DTPW and/or HTA to operate and maintain any Facility governed by this Consent Decree, and such contractor's officers, agents, directors, employees, parent and related companies, subsidiaries, successors in interest and assigns. The Appendices to this Consent Decree are incorporated herein and shall have the same force and effect as all provisions hereto. The undersigned representatives of the United States, DTPW, and HTA certify that they are fully authorized to enter into this Consent Decree and to execute and to bind legally each signatory to this Consent Decree.

5. Effective from the date of lodging of this Consent Decree until its termination, DTPW and/or HTA, as applicable, shall give written notice of this Consent Decree to any person or entity to whom DTPW and/or HTA may transfer ownership or operation of the Facilities affected by the terms and requirements of this Consent Decree, and shall provide a copy of this Consent Decree to any such person or entity. DTPW and/or HTA, as applicable, shall notify EPA and the United States Department of Justice in writing of the intent to transfer such

ownership or operation at least fifteen (15) days prior to the expected date of any such transfer or as soon as practicable, and no later than five (5) business days after actual transfer occurs.

6. DTPW and/or HTA, as applicable, shall make a copy of this Consent Decree available to each engineering, consulting and contracting firm to be retained to perform the work or any portion thereof required by this Consent Decree upon execution of any contract relating to such work and shall inform each such engineering firm, consultant or contractor of the terms of this Consent Decree, and shall also so inform each engineering, consulting and contracting firm already retained no later than thirty (30) days after the date of lodging of this Consent Decree. Any action taken by any engineering firm, contractor or consultant to implement DTPW and/or HTA's duties under this Consent Decree shall be considered an action of DTPW and/or HTA for purposes of determining compliance with this Consent Decree.

7. In any action to enforce this Consent Decree, neither DTPW nor HTA, as applicable, shall raise as a defense the failure by any of their agents, contractors, subcontractors, employees, successors or assigns to take actions necessary to comply with this Consent Decree, except as provided under Section XIX (Force Majeure) of this Consent Decree. This Section shall not limit DTPW and/or HTA's right to take all appropriate action against any person or entity that causes or contributes to DTPW and/or HTA's failure to perform.

IV. DEFINITIONS

8. Unless otherwise defined herein, the terms used in this Consent Decree will have the meaning given to those terms in the Act, 33 U.S.C. §§ 1251 *et seq*., and the regulations promulgated thereunder. The following terms, as used in this Consent Decree and for purposes of this Consent Decree only, will be defined as follows:

a. "Baldorioty de Castro Pump Station," "De Diego Pump Station," and "Stop 18 Pump Station" (collectively, the "DNER Pump Stations") shall mean those pump stations, currently owned and operated by DNER and located at Baldorioty de Castro Avenue, De Diego Avenue, and Roosevelt Street, respectively, in San Juan, Puerto Rico, and include the integrated entity composed of the last manhole in the gravity pipeline segment that feeds the pump stations' wet wells and the pipeline in those sections, the entrance channel(s), the bar screens, the wet wells, the pumps and motors, level indicators, float switches and controllers, electrodes, plug valves, check valves, the electrical motor control center(s) ("MCC") and/or electrical control panels, transfer switches, alternate power units ("APU") and their fuel tanks, disinfection equipment (if any), meters and metering equipment (if any), and any other related equipment (such as continuous monitoring equipment), and the discharge pipelines that extend toward the Facility property limits, including discharge points.

b. The term "Complaint" shall mean the First Amended Complaint filed by the United States in this action captioned United States v. Municipality of San Juan, et al., Civ. No. 3:14-cv-1476 (CCC).

c. The term "Consent Decree" shall mean this Consent Decree, including all Appendices hereto, and any modifications made hereto.

d. The term "date of lodging" shall mean the date on which this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Puerto Rico.

e. Unless otherwise indicated, the term "day" or "days" as used herein shall mean a calendar day or days. References to "working days" or "business days" shall mean days of the week other than Saturdays, Sundays, holidays, and days containing half-holidays. In computing any period of time under this Consent Decree, if the last day would fall on a Saturday, Sunday or federal or Commonwealth holiday, the period shall continue until the next day other than a Saturday, Sunday, or holiday.

f. The term "DTPW" shall mean the Department of Transportation and Public Works of the Commonwealth of Puerto Rico, its officers, directors, employees, successors in interest and assigns.

g. The term "DTPW/HTA" shall mean "DTPW and HTA jointly and severally." The term "DTPW and/or HTA" shall mean "DTPW and HTA jointly or DTPW or HTA individually, as applicable." Nothing in this Consent Decree shall preclude DTPW and HTA from sharing resources to achieve compliance with this Consent Decree.

h. The term "DTPW/HTA's MS4" or "DTPW/HTA's Municipal Separate Storm Sewer System" shall mean the small municipal separate storm sewer system, as that term is defined in 40 C.F.R. § 122.26(b)(16), presently owned by DTPW/HTA.

i. The term "Effective Date" shall mean that date as described in Section XXI (Effective Date).

j. Unless otherwise indicated, "Facility or "Facilities" shall refer to DTPW/HTA's municipal separate storm sewer system, HTA's Vacuum Sewer System, and all other equipment owned and/or operated by DTPW/HTA pertaining to DTPW/HTA's MS4, as defined herein and covered by this Consent Decree.

k. The term "HTA" shall mean the Puerto Rico Highway and Transportation Authority, its officers, directors, employees, successors in interest and assigns.

l. The term "NPDES" shall mean National Pollutant Discharge Elimination System, as established by 33 U.S.C. § 1342.

m. The term "Parties" shall mean the parties to this Consent Decree: the United States; The Commonwealth, acting through DTPW; HTA; and the Commonwealth of Puerto Rico pursuant to 33 U.S.C. § 1319(e).

n. The term "PRASA" shall mean the Puerto Rico Aqueduct and Sewer Authority, its officers, directors, employees, successors in interest and assigns.

o. The term "Quarterly Report" shall mean the quarterly progress reports to be submitted by DTPW/HTA pursuant to Section VIII (Quarterly Progress Reports) of this Consent Decree.

p. The term "San Juan's MS4" or "San Juan's Municipal Separate Storm Sewer System" shall mean San Juan's small municipal separate storm sewer system, as that term is defined in 40 C.F.R. § 122.26(b)(16).

q. The term "submit," with respect to documents required to be submitted pursuant to this Consent Decree, shall mean the date the document is placed in the express mail, certified mail, and/or express courier service, unless otherwise specifically stated.

V. COMPLIANCE MEASURES

9. NPDES Permit and Storm Water Management Program ("SWMP")

a. DTPW/HTA shall comply with the 2006 Small MS4 General Permit obtained under Permit Tracking No. PRR040080 and continue to develop the Storm Water Management Program ("SWMP") submitted with the Notice of Intent ("NOI") to obtain coverage under said 2006 MS4 General Permit. DTPW/HTA shall comply with the 2006 MS4 General Permit, until such time as DTPW's and HTA's coverage under a new MS4 General Permit is effective. The SWMP shall be subject to EPA review and DTPW/HTA shall amend their SWMP within ninety (90) days of EPA's request to amend, consistent with EPA's comments. DTPW/HTA shall continue implementing their current SWMP and the Annual Report shall contain written certification of DTPW/HTA's compliance with its SWMP. The SWMP shall be enforceable under this Consent Decree, as if fully incorporated herein. The SWMP must comply with the effective MS4 Permit and contain schedules and milestones for implementation of the SWMP within the geographic boundaries of the Municipality of San Juan and for any other adjacent municipalities interconnected to the portion of the DTPW/HTA MS4 located within the geographic boundaries of San Juan. Any failure to comply with the SWMP within the geographic area described in the prior sentence shall subject DTPW/HTA to stipulated penalties as provided in Section VII (Stipulated Penalties) of this Consent Decree. DTPW/HTA shall submit any SWMP modifications to EPA for review with the Annual Report. DTPW/HTA shall implement their SWMP modifications.

b. If a new MS4 General Permit is issued, DTPW and/or HTA, as the case may be, shall submit to EPA a Notice of Intent ("NOI") to be covered under the new MS4 General Permit within the time period set forth therein, and submit

a revised SWMP consistent with the new MS4 General Permit and according to the deadlines set forth therein. In the event that any of the requirements (including deadlines) set forth in Section V of this Consent Decree are inconsistent with a new MS4 General Permit, the terms of this Consent Decree shall control unless otherwise modified by the Parties pursuant to Section XIX (Modification), following (if necessary) dispute resolution pursuant to Section XIV (Dispute Resolution).

10. DTPW/HTA MS4 Reconnaissance, Investigation, Planning & Design, Implementation, and Construction Work Plans, and Urgent Action Registry

a. Not later than the date of lodging of this Consent Decree, DTPW/HTA shall commence performance of and comply with the plans for Priority Areas 1A through 1E of its Reconnaissance, Investigation, Planning & Design, Implementation, and Construction Work Plan ("Stage I Work Plan"), as approved by EPA, attached hereto as Appendix A. DTPW/HTA's Quarterly Reports shall contain written certification that DTPW/HTA are in compliance with the attached Stage I Work Plan. If DTPW/HTA are not meeting or cannot meet specific milestones, DTPW/HTA shall indicate this in the Quarterly Reports. DTPW/HTA's MS4 Annual Reports must contain a status of each of the milestones.

b. Performance of Stage I Work Plan for Priority Areas 1A through 1E. DTPW/HTA shall complete each of the first three phases (Phase I: Reconnaissance, Phase II: Investigation and Phase III: Planning & Design) for Priority Areas 1A through 1E of the Stage I Work Plan by not later than the dates set forth in Appendix A, which is specifically incorporated herein and binding on DTPW/HTA. Within sixty (60) days of the conclusion of Phase III for each Priority Area 1A through 1E, DTPW/HTA shall submit to EPA for review and approval, pursuant to Section VI (Review and Approval Procedures), a Stage I Phase IV (Implementation and Construction) Schedule, which shall be incorporated hereto as Appendix A1. Within one hundred and twenty (120) days of receipt of EPA approval to proceed, DTPW/HTA shall commence the Phase IV activities for each Priority Area 1A through 1E. DTPW/HTA shall complete construction of Phase IV activities within the time set forth in the EPA-approved Stage I Phase IV Schedule. Not later than fourteen (14) years after the date of lodging of this Consent Decree, with the exception of those Priority Areas in Appendix A for which Phase IV activities must be completed not later than ten (10) years after the date of lodging, DTPW/HTA shall complete all Phases I through IV for Priority Areas 1A through 1E of the Stage I Work Plan. However, Phase IV work relating to Priority Areas 1A through 1E may be extended where EPA determines that DTPW/HTA have made good faith efforts and sufficient progress to justify an extension of the deadline for conclusion of those Phase IV activities. For the purpose of making such determination, EPA may consider any factors and information, including but not limited to

financial information submitted pursuant to Paragraph 15. Following completion of Phase IV activities for the MS4 servicing or appurtenant to those state roadways comprised within each sub-ward within the EPA-approved schedule, DTPW/HTA shall certify completion of such activities for the prior quarter in Quarterly Reports, pursuant to Section VIII (Quarterly Progress Reports). At a minimum, DTPW/HTA's certification of completion shall also certify that all necessary Illicit Discharge Detection and Elimination ("IDDE") work for MS4 servicing or appurtenant to the state roadways comprised within each sub-ward, including that it has mapped the MS4 servicing or appurtenant to such state roadways, conducted sewer inspections for those outfalls that showed signs of illicit connections/illicit discharges, and eliminated all illicit connections/illicit discharges.

c. Performance of Stage II Work Plan Activities for Each Remaining Priority Area in San Juan. Not later than eight (8) years after the date of lodging of this Consent Decree, DTPW/HTA shall submit to EPA for review and approval, pursuant to Section VI (Review and Approval Procedures), a Work Plan ("Stage II Work Plan"), which shall include, but not be limited to, schedules for completion of Phases I through III for each remaining Priority Area in San Juan. Within sixty (60) days of receipt of EPA approval to proceed with the Stage II Work Plan activities, DTPW/HTA shall commence such activities and shall complete each of the first three Phases for each remaining Priority Area by not later than the dates set forth in the Stage II Work Plan, which shall become Appendix A2, hereto, effective on the date EPA approves the Stage II Work Plan. A draft Stage II Work Plan is attached as Appendix A2. Within sixty (60) days of the conclusion of Phase III for each remaining Priority Area, DTPW/HTA shall submit to EPA for review and approval, pursuant to Section VI (Review and Approval Procedures), a Phase IV (Implementation and Construction) Schedule. The Stage II Phase IV Work Plan Schedule shall become Appendix A3, hereto, effective on the date EPA approves the schedule. Within one hundred and twenty (120) days of receipt of EPA approval to proceed, DTPW/HTA shall commence the Phase IV activities for each remaining Priority Area. DTPW/HTA shall complete construction of Phase IV activities within the time set forth in the EPA-approved Stage II Phase IV Schedule. Following completion of Phase IV activities under the Stage II Work Plan, DTPW/HTA shall certify completion of such activities for the prior quarter in Quarterly Reports, pursuant to Section VIII (Quarterly Progress Reports).

d. Minimum Standards for DTPW/HTA Work Plans. The following minimum standards shall apply to each Work Plan (Stage I and Stage II Work Plans) required by this Consent Decree. For all work performed in each Phase of each Work Plan, DTPW/HTA shall develop a Quality Assurance and Quality Control Plan and a Traffic Work Plan in accordance with Federal Highway Administration standards, as applicable.

i. Phase I (Reconnaissance) of the Work Plan shall include, but not be limited to: (a) information and data gathering for asset map generation, outfall reconnaissance, and asset map updating and verification, (b) identification of suspicious or illicit flow in storm sewer pipes, (c) identification of potential interconnections between systems and straight pipe connections, (d) review of and prioritization based on history of complaints, where applicable, (e) identification of suspicious surface depressions on or about sewer pipe or manhole areas, (f) identification of sewer pipes where obstructions were encountered and cleaning actions will be required, and (g) documentation of preliminary findings from the field verification exercise in anticipation of Phase II (Investigation) activities. DTPW/HTA may rely on and incorporate existing studies, reports, and other information for purposes of satisfying the requirements of Phase I.

ii. Phase II (Investigation) of the Work Plan shall include, but not be limited to: (a) preparation and implementation of a sewer system cleaning and inspection schedule, (b) creation of a manhole and catch basin inspection digital database including photographs and digital video DVDs, (c) where needed, performance of additional reconnaissance activities such as CCTV and camera inspections, dye testing, visual inspection, smoke testing, sounding, or other means to confirm connectivity, condition of assets and sources of illicit discharges or interconnections, (d) identification of all interconnections and illicit flows or discharges to either system (MS4 or sanitary sewer) found during Phase I and Phase II, (e) preparation of a final Phase II Report, incorporating all findings of Phases I and II, and (f) submission of updated Outfall and MS4 maps in GIS format (i.e. both PDF and Shapefiles).

iii. Phase III (Planning and Design) of the Work Plan shall include, but not be limited to: (a) development and/or design of actions to eliminate interconnections and illicit connections or discharges and repair, replace and/or construct storm water manholes, storm water sewer pipes, storm water catch basins, storm water pump stations, construction and routine inspection and maintenance activities and schedules, and any other alternatives or actions to properly operate and maintain the MS4, according to the priority established in the Work Plan attached hereto as Appendix A (or Appendix A2, as the case may be), (b) completion of storm sewer capacity analysis where storm sewer replacement or upgrades are planned during this Phase and in flood prone areas where replacement or upgrades are necessary, and (c) preparation of a final Phase III Report and Proposed Phase IV Implementation Schedule.

iv. Phase IV (Implementation) of the Work Plan shall complete the work contemplated by the Phase III Report and Proposed Phase IV Implementation Schedule according to the schedules set forth therein.

e. DTPW/HTA MS4 Maps. DTPW/HTA shall submit revised maps of the DTPW/HTA's MS4 (including results of Outfall Reconnaissance activities for the year) in GIS format (i.e., both PDF and Shapefiles) on an annual basis along with the Annual Report.

f. Urgent Action Registry and Schedule for Elimination of Illicit Discharges.

DTPW/HTA shall submit, with each Quarterly Report, an Urgent Action Registry containing information describing all complaints from EPA, PRASA, San Juan, DNER, the Puerto Rico Environmental Quality Board (EQB), and any other government agency or citizen providing notice of a complaint of illicit discharges to/from DTPW/HTA's MS4 without regard to severity of the suspect discharge. This Urgent Action Registry will also include the status of the reconnaissance and/or investigation performed by DTPW/HTA of these complaints, the expected date for correcting or eliminating any interconnections identified during said reconnaissance and/or investigation, and the expected date for eliminating each illicit discharge, interconnection, or problem so identified, according to the priority described therein. For those discharges identified by DTPW/HTA to be included in the Urgent Action Registry as a result of the aforementioned complaints, the following discharges shall be maintained in the Urgent Action Registry until corrected or eliminated: (i) any discharge that, based on field screening, meets or exceeds 3 mg/L of ammonia and with a flow rate of 2 gallons per minute or more, or (ii) any discharge that violates the Commonwealth's Water Quality Standards Regulation 1303.1 A, B, E, and H with a flow rate of 2 gallons per minute or more. A copy of the current Urgent Action Registry is attached hereto as Appendix B. All illicit connections and discharges included in the Urgent Action Registry shall be eliminated as soon as possible, but no later than one (1) year from the date of identification. The Urgent Action Registry, for each illicit connection or discharge that will not be eliminated within one (1) year, shall include the reasons for needing additional time (which shall not exceed three (3) years) to correct the problem. Subject to EPA review and approval, pursuant to Section VI (Review and Approval Procedures), DTPW/HTA may request that an item listed on the Urgent Action Registry be removed from the Urgent Action Registry and be deferred to the Work Plan, to be addressed according to the timelines and priorities memorialized therein. Once the problem is corrected or the illicit discharge or interconnection is otherwise addressed, the Urgent Action Registry shall include the date that the corrective action was implemented. Following submission of this information, the item can be removed from or coded as addressed in the Urgent Action Registry in the next Quarterly Report.

11. Capital Improvements to DTPW/HTA's MS4 and Other Measures

a. *Installation, Inspection, Maintenance, and/or Replacement of Warning Signs at MS4 Outfalls*

i. DTPW/HTA shall install warning signs at all outfalls for: (i) any discharge that, based on field screening, meets or exceeds 3 mg/L for ammonia and with a flow rate of 2 gallons per minute or more, or (ii) any discharge that violates the Commonwealth's Water Quality Standards Regulation 1303.1 A, B, E, and H with a flow rate of 2 gallons per minute or more. Not later than ninety (90) days after the date of lodging of this Consent Decree, DTPW/HTA shall submit information on known proposed locations for signs to be posted for EPA review and approval, pursuant to Section VI (Review and Approval). Within forty-five (45) days of EPA approval of the locations DTPW/HTA shall post the signs and report on the posting of signs pursuant to Section VIII (Quarterly Progress Reports). Thereafter, and at a rate not less than once every two (2) months, DTPW/HTA shall inspect each warning sign.

ii. If, at the time of inspection, the warning signs are damaged or altered such that the content of the warning is no longer visible, or if the sign is no longer in its place or is missing, or if it no longer effectively communicates its contents, then within ten (10) business days, DTPW/HTA shall fix or reinstall the sign.

iii. DTPW/HTA may request a reduction in the frequency of the warning sign inspections. Such request shall be submitted, in writing, to EPA for review and approval, pursuant to Section VI (Review and Approval Procedures), and explain why such reduced frequency is appropriate.

iv. If the sanitary wastewater discharge flowing from an outfall is eliminated during both dry and wet weather, subject to EPA review and approval, pursuant to Section VI (Review and Approval Procedures), DTPW/HTA may remove the warning sign relating to that outfall, subject to EPA's right to require warning signs to be reposted. Results of screening (using measurements of ammonia, pH, turbidity, temperature, and field observations) and/or laboratory analysis for indicator pollutants (fecal coliform, total coliform, enterococcus, surfactants, and other pollutants in Appendix D and the SWMP) of discharges at the MS4 outfall points shall be submitted to EPA, pursuant to Section VIII (Quarterly Progress Reports).

v. DTPW/HTA shall create a table, spreadsheet, database or other system for collecting information on sign inspections, including but not limited to such information as the sign locations (including a general description referring to streets or water body and including latitude and longitude), the date(s) inspected, condition of the sign, and the date that any remedies were completed. This information shall be

submitted to EPA, pursuant to Section VIII (Quarterly Progress Reports).

vi. The language, dimensions, design, and placement locations of the warning signs approved by EPA are described in Appendix C (Warning Signs) hereto. EPA reserves the right to modify the language, dimensions, design, and/or placement of warning signs.

vii. DTPW/HTA shall install additional warning signs at outfalls on property owned or controlled by DTPW/HTA no later than fifteen (15) days after receipt of a written request to do so by EPA or no later than fifteen (15) days after DTPW/HTA identify sanitary wastewater discharging from an MS4 outfall. Regardless of whether such action is requested by EPA, DTPW/HTA shall install additional warning signs at outfalls for: (i) any discharge that, based on field screening, meets or exceeds 3 mg/L for ammonia and with a flow rate of 2 gallons per minute or more, or (ii) any discharge that violates the Commonwealth's Water Quality Standards Regulation 1303.1 A, B, E, and H with a flow rate of 2 gallons per minute or more.

b. *Vacuum Truck Sludge Disposal Plan.* Not later than ninety (90) days after the date of lodging of this Consent Decree, DTPW/HTA shall submit their plan to EPA for review and approval, pursuant to Section VI (Review and Approval Procedures), for proper disposal of vacuum truck and storm sewer cleaning sludges. Development of this Vacuum Truck Sludge Disposal Plan shall include any means for disposal of sludges in compliance with all applicable federal and Commonwealth law and regulations, and may include consideration of construction and operation of a sludge drying bed(s). DTPW/HTA may enter into an agreement to implement the Sludge Disposal Plan in coordination with PRASA or another entity; however, the failure to enter into or perform under such an agreement shall not excuse DTPW/HTA from the requirement to fully implement the Vacuum Truck Sludge Disposal Plan. DTPW/HTA shall fully implement the Vacuum Truck Sludge Disposal Plan not later than one (1) year following the date of EPA approval pursuant to Section VI (Review and Approval Procedures) of this Consent Decree. DTPW/HTA's sludge disposal plan shall be incorporated into their SWMPs.

c. *HTA Barrio Obrero Vacuum Sewer Investigation and Repair Report*

i. Not later than thirty (30) days after the date of lodging of this Consent Decree, HTA shall submit to EPA a Barrio Obrero Vacuum Sewer Investigation and Repair Report ("Vacuum Sewer Report"). At a minimum, the Vacuum Sewer Report shall report on the identification and elimination of all interconnections found between the vacuum sewer and storm sewers, and the work already performed to eliminate illicit

stormwater connections into or discharges from the vacuum sewer system

ii. Not later than one hundred twenty (120) days after the date of lodging of this Consent Decree, HTA shall enter into an agreement with PRASA to transfer operation of the Barrio Obrero vacuum sewer system (including the pump station) to PRASA, to require the proper repair and operation of the sanitary system, and to transfer the funds required by PRASA for PRASA to perform the necessary repairs to the sanitary system.

iii. If operation of the Barrio Obrero vacuum sewer system is not transferred to PRASA as contemplated by this paragraph, one hundred and eighty (180) days after the date of lodging of this Consent Decree, HTA shall submit an Investigation and Repair Plan and Schedules to EPA for review and approval pursuant to Section VI (Review and Approval Procedures) of this Consent Decree. HTA shall fully implement the Barrio Obrero vacuum sewer repair plan within the time set forth in the EPA-approved plan.

12. Asset Management Program, Standard Operating Procedures ("SOPs"), Including Schedules for DTPW/HTA MS4 Routine Sewer Cleaning

As part of its Stage I and Stage II Work Plans, DTPW/HTA shall develop an Asset Management Program, including protocols and standard operating procedures concerning the inspection, cleaning, and repair of components of DTPW/HTA's MS4 infrastructure (including, but not limited to, storm sewers, force mains, storm water pump stations, wet wells, catch basins, manholes, tide gates, and outfall structures) to reduce surcharging of storm sewers during storm events. DTPW/HTA shall ensure that the MS4 is consistently cleaned in accordance with the MS4 Permit (See Section 6.9 Proper Operation and Maintenance), the SWMP, and Section 4.3 of EPA's MS4 Program Evaluation Guidance, EPA-833-R-07-0, available at http://www.epa.gov/npdes/pubs/ms4guidewithappendixa.pdf. Not later than one (1) year from the date of lodging of this Consent Decree, DTPW/HTA shall provide to EPA for review and approval, pursuant to Section VI (Review and Approval Procedures), a routine cleaning itinerary and checklist to facilitate the cleaning of the DTPW/HTA's MS4 after Phase II activities are concluded for each sub-ward. DTPW/HTA shall use all available information to identify locations in need of cleaning, and to prioritize their MS4 maintenance consistent with its priority area and priority subarea designations in the Work Plans.

13. Spill Prevention Control and Countermeasures Plans/Spill Control Plans

a. If applicable, within six (6) months of the date of lodging of the Consent Decree, DTPW/HTA shall develop, submit to EPA for review, and implement the final SPCC Plans for DTPW/HTA's MS4 Facilities, as required by current regulations. These SPCC plans shall be in full

compliance with the SPCC regulations under Section 311 of the Act and 40 CFR Part 112. The submittal shall contain written certification that each of the SPCC Plans fully complies with 40 CFR Part 112 and Section 311 of the Act.

b. If applicable, within one (1) month of the date of completion of implementation pursuant to Paragraph 13.a above, DTPW/HTA shall submit written certification that it has fully implemented the SPCC Plan and is in full compliance with 40 CFR Part 112 and Section 311 of the Act in the next Quarterly Report, pursuant to Section VIII (Quarterly Progress Reports).

c. Within one (1) year of the date of lodging of this Consent Decree, DTPW/HTA shall submit to EPA a Spill Control Plan for containing and remediating spills or leaks of petroleum products or hazardous substances into their MS4. DTPW/HTA's Spill Control Plan shall be incorporated into their SWMP.

14. Outfall Reconnaissance Inventory Program

a. Not later than three (3) years after the date of lodging of this Consent Decree, DTPW/HTA shall complete the Outfall Reconnaissance Inventory ("ORI") within the geographic boundaries of the Municipality of San Juan and for any other adjacent municipalities interconnected to the portion of DTPW/HTA's MS4 located within the geographic boundaries of the Municipality of San Juan. DTPW/HTA shall complete the ORI for at least 15% of the total roadway mileage within the geographic boundaries of the Municipality of San Juan and for other adjacent municipalities interconnected to the portion of DTPW/HTA's MS4 located within the geographic boundaries of the Municipality of San Juan (the "Mileage") within one (1) year of the date of lodging of this Consent Decree, at least 40% of the Mileage within two (2) years of the date of lodging of this Consent Decree and 100% of the Mileage within three (3) years of the date of lodging of this Consent Decree. DTPW/HTA may rely on data developed by the San Juan Bay Estuary Program ("SJBEP") through outfall reconnaissance or similar activities performed by SJBEP or its contractors in and around the Municipal area for purposes of complying with this requirement.

b. At a minimum, the DTPW/HTA ORI program shall include, but not be limited to, the inspection of every outfall or point where DTPW/HTA's MS4 discharges into a receiving water. At each outfall, DTPW/HTA shall utilize field tests for ammonia, pH, chlorine and temperature; assess for odor, surfactants, turbidity, foam, trash, and color. DTPW/HTA must also identify any straight pipe discharges (discharges from non-DTPW/HTA MS4 outfalls) (e.g., direct discharge pipes from residences, businesses, industrial facilities) into the receiving waters which are not part of DTPW/HTA's MS4, that it encounters during the survey, providing their locations, street names, coordinates (NAD 83 system coordinates), and receiving water bodies.

Notice of such straight pipe discharges shall be provided as set forth in Paragraph 14.g below.

c. Where monitoring required by subparagraph (b), above, is inconclusive (either not clearly denoting illicit discharges or not clearly denoting no illicit discharges), DTPW/HTA shall conduct sampling and laboratory analysis for indicator pollutants identified in Appendix D. Samples shall be taken in accordance with DTPW/HTA's SWMP, as appropriate, (see also, e.g., Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments, Center for Watershed Protection and Robert Pitt (Oct. 2004) available at http://water.epa.gov/polwaste/npdes/stormwater/upload/idde_manualwithappendices.pdf) and with 40 C.F.R. Part 136.

d. If the sampling results (including field testing and laboratory results) for DTPW/HTA's MS4 outfalls show an exceedance of the Water Quality Standards, and/or shows signs of an illicit connection/discharge, DTPW/HTA shall address this in the Work Plan and include in the Quarterly Report for the relevant period, the actions it plans to take to reduce these exceedances and/or illicit connections to the maximum extent practicable, as required by the MS4 Permit. When the actions described therein have been implemented, DTPW/HTA shall include in the Quarterly Report for the relevant period, the actions it has taken or will take. Note that inclusion in the Work Plan can satisfy quarterly reporting requirements. If EPA determines that the actions proposed or already taken by DTPW/HTA are not sufficient to address the exceedances, EPA may require DTPW/HTA to take additional measures, as appropriate.

e. Consistent with DTPW/HTA's SWMP, DTPW/HTA shall maintain an ORI Tracking Database. DTPW/HTA shall submit the ORI Tracking Database in electronic format to EPA in its Annual Reports required pursuant to the MS4 General Permit. The ORI Tracking Database shall include information on each DTPW/HTA MS4 outfall (including locations, street names, coordinates (NAD 83 system coordinates), and receiving water bodies) and whether illicit discharges are suspected, confirmed, or not observed.

f. Outfall data shall be used to update DTPW/HTA MS4's maps.

g. DTPW/HTA shall include in the ORI Tracking Database the information in Paragraph 14.e above, for each straight pipe discharge identified during the ORI. DTPW/HTA shall provide notice of such straight pipe discharges to EPA, EQB, MSJ, and PRASA.

15. Funding and Financial Reporting.

a. Notwithstanding the financial contributions or potential contributions of other entities (including but not limited to DNER), pursuant to Paragraph 15.b., below), beginning with its first fiscal year after the date of lodging of this Consent Decree, DTPW/HTA shall budget sufficient funds for each operating year to implement all measures in the SWMP, comply with the MS4 Permit, and comply with all the requirements of Section V (Compliance

Measures) of this Consent Decree. Once per year (or with each Annual Report due pursuant to an applicable NPDES Permit), DTPW/HTA shall submit (i) Single Audit annual financial statements for the prior fiscal year, when these are made available by the Commonwealth of Puerto Rico's Treasury Department, (ii) its annual budget for the current fiscal year, after it is approved by the Puerto Rico Legislature and signed by the Governor of Puerto Rico, (iii) documents indicating spending to date and expected completion date for each MS4 program project for which the annual expense exceeds $500,000, and (iv) the annual budget for its MS4 program. DTPW/HTA shall submit quarterly budgets and cash flow projections within thirty (30) days of a written request by the United States to submit this information.

b. Subject to the entry by the Court of agreements between the United States and DNER and/or between the United States and San Juan in this matter, and pursuant to and to the extent provided for in those agreements, certain funds may be deposited into the Court Registry Account to be used by, DTPW/HTA, and/or San Juan. DTPW/HTA shall use these funds solely for the purpose of completing activities under the Stage I Work Plan and to be performed in and around the De Diego, Stop 18, and Baldorioty de Castro Priority Areas. DTPW/HTA may request reimbursement under the terms of the Consent Decree between the United States and the the Commonwealth Department of Natural and Environmental Resources in this action using the Reimbursement Form attached hereto as Appendix E

c. Nothing in this Consent Decree shall be construed to limit the Parties from agreeing to a reallocation of funds to be paid into the Court Registry Account and to be available for reimbursement to effect the timely and efficient completion of the objectives of this Consent Decree.

16. Personnel and Training.

a. Project Coordinators

i. DTPW/HTA shall designate and notify EPA, pursuant to the provisions of Section XI of this Consent Decree, a Project Coordinator for purposes of this Consent Decree. DTPW/HTA's Project Coordinator must have sufficient technical expertise to coordinate the performance of all work required by Section V (Compliance Measures). DTPW/HTA's Project Coordinator may not be an attorney representing any party in this matter and may not act as the supervising contractor. DTPW/HTA may assign other representatives, which may include employees, other contractors and/or consultants, to assist in coordinating the work.

ii. EPA shall designate and notify DTPW/HTA, pursuant to the provisions of Section XI of this Consent Decree, of its Project Coordinator and Alternate Project Coordinator. EPA may assign other representatives, which may include its employees, contractors and/or consultants, to oversee the work.

iii. Any Party may change its designated Project Coordinator by providing notice pursuant to the provisions of Section XI of this Consent Decree to the other Parties.

b. Other Personnel and Training

i. DTPW/HTA shall maintain the necessary and/or adequate personnel and/or contractors to comply with its MS4 Permit and Section V (Compliance Measures) of this Consent Decree. If EPA determines that the number of personnel or training programs are insufficient, by demonstrating a delay in compliance with the Permit requirements and Section V (Compliance Measures) of this Consent Decree, EPA may require that DTPW/HTA take additional measures, as appropriate.

ii. DTPW/HTA shall ensure that all personnel with responsibilities for compliance with the Compliance Measures referenced in Section V (Compliance Measures) of this Consent Decree receive necessary and appropriate training to carry out the obligations under this Consent Decree and its MS4 Permit obligations, consistent and in compliance with the applicable requirements of the MS4 Permit.

iii. DTPW/HTA shall provide training to all personnel with responsibilities for compliance with this Consent Decree. This training shall include proper operation and maintenance of the MS4 and the IDDE program and shall begin no later than ninety (90) days after the date of lodging of this Consent Decree. Training shall continue on an annual basis. All new employees assigned to work on matters related to this Consent Decree and the MS4 Permit shall receive training within ninety (90) days of the commencement of employment.

iv. DTPW/HTA shall provide annual training for the proper operation and maintenance of their Facilities to all operators and supervisors. If applicable, all new pump station operators hired by DTPW and/or HTA shall be trained within ninety (90) days of the commencement of employment.

v. DTPW/HTA shall produce a copy of all training materials used, including the agenda and the attendance checklist, in the Quarterly Report to EPA, covering the applicable quarter, pursuant to Section VIII (Quarterly Progress Reports).

17. Green Infrastructure. DTPW/HTA shall consider Green Infrastructure Measures as part of the alternatives to achieve compliance in Phase IV of their Work Plan. See EPA's Green Infrastructure web site http://cfpub.epa.gov/npdes/home.cfm?program_id=298 for information on Green Infrastructure.

18. Memorandum of Understanding with San Juan. Not later than thirty (30) days of the date of lodging of this Consent Decree, DTPW/HTA shall finalize the Memorandum of Understanding ("MOU") with San Juan for responsibilities and relationships pertaining to San Juan's MS4 and DTPW/HTA's MS4 within San Juan.

VI. REVIEW AND APPROVAL PROCEDURES

19. In recognition of the unique circumstances of this matter, and to advance the Objectives of this Consent Decree, all plans of action to be taken by DTPW/HTA shall be implemented without the need for EPA approval of those plans, unless such approval is expressly required by this Consent Decree, as evidenced by reference to this Section VI (Review and Approval Procedures). Unless indicated otherwise in this Consent Decree, the following review and approval procedures set forth in this Section shall apply with respect to any plan, program or other document which is required to be submitted for EPA review and approval pursuant to this Consent Decree:

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

b. In the event of approval of the complete submission, DTPW/HTA shall proceed to take any actions required by the plan, program or other approved document, in accordance with the schedule contained therein, as approved in writing by EPA.

c. In the event of written approval of portions of the submission or approval upon specified conditions, DTPW/HTA shall proceed to take the actions identified in the non-deficient portion of the plan, program, other document, or portion thereof, if severable, in accordance with any applicable conditions specified by EPA, subject only to the right of DTPW/HTA to invoke the Dispute Resolution procedures set forth in Section XIV (Dispute Resolution) of this Consent Decree with respect to the conditions imposed or the disapproved portions. The implementation of any non-deficient portion of the submission shall not eliminate the potential for DTPW/HTA to incur stipulated penalties pursuant to Section VII (Stipulated Penalties) based on the failure of DTPW/HTA to meet other approved requirements of the submission so long as such other approved requirements are technically severable from the disapproved portion(s) of the submission.

d. Upon receipt of a notice of disapproval of all or part of a submission from EPA, DTPW/HTA shall, within forty-five (45) days, correct the deficiencies as directed by EPA's written comments and resubmit the plan, program or other document for approval. Any stipulated penalties applicable to the original submission, as provided in Section VII of this Consent Decree (Stipulated Penalties), shall accrue during the 45-day period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or is materially deficient.

20. In the event that a resubmitted plan, program or other document, or portion thereof, is disapproved by EPA, EPA may again require DTPW/HTA to correct the deficiencies in accordance with preceding Paragraphs, subject to the right of DTPW/HTA to invoke the Dispute Resolution procedures set forth in Section XIV (Dispute Resolution) of this Consent Decree and the right of EPA to seek stipulated penalties as provided in Section VII (Stipulated Penalties).

21. If DTPW/HTA timely submits or resubmits an item for review and approval or comments under this Consent Decree, and if EPA fails to approve, provide comments or otherwise act on a submittal within sixty (60) days of receipt of the submittal, DTPW/HTA shall be entitled to an extension of any interim or final deadlines which DTPW/HTA can demonstrate that it will be unable to meet as a result of the length of the review process. Any such request must be in writing and must identify the deadlines for which an extension is requested, the length of the extension requested, and set forth the basis for each such request. In the event that EPA should disapprove, in whole or in part, the extended deadline requested by DTPW/HTA, DTPW/HTA may invoke the Dispute Resolution procedures set forth in Section XIV (Dispute Resolution) of this Consent Decree.

22. If DTPW/HTA submits or resubmits a plan, or program, or other document that fails to contain all of the required elements as set forth in the appropriate Section or Appendix of this Consent Decree, DTPW/HTA shall have sixty (60) days from EPA notice that such elements are missing to submit the missing elements. If DTPW/HTA fails to comply within this time, it shall be deemed to have failed to make the submission, unless DTPW/HTA invokes the Dispute Resolution procedures set forth in Section XIV (Dispute Resolution) of this Consent Decree. In the case of a submission or resubmission that fails to contain all required elements after opportunity to cure, stipulated penalties begin to accrue on the date the submission or resubmission was due.

23. DTPW/HTA may request in writing that EPA grant an extension of any deadline established by this Consent Decree, and EPA shall grant such, in writing, if it determines that good faith efforts to comply with the timetables established in this Consent Decree have been made and good cause for the requested extension has been shown. The granting of such an extension pursuant to this Paragraph is not necessarily a “material modification” within the meaning of Section XIX (Modification) of this Consent Decree.

VII. STIPULATED PENALTIES

24. DTPW and/or HTA shall be liable to pay to the United States stipulated penalties in the amounts set forth below. For each day that DTPW and/or HTA fails to complete the work specified in accordance with the applicable schedules, including all benchmarks and interim deadlines, developed pursuant to Section V (Compliance Measures) and the Appendices of this Consent Decree, including schedules, benchmarks and interim deadlines developed after the Effective Date of this Consent Decree, and for each day that DTPW and/or HTA fails to submit a report or plan or satisfy any other requirement of this Consent Decree and the Appendices, DTPW and/or HTA shall be liable for stipulated penalties as follows:

Type of Requirement	Period of noncompliance	Per day per violation
Tier I Requirements	1 - 60 days	$250.00
	61 - 120 days	$500.00
	Over 120 days	$750.00
Tier II Requirements	1 - 60 days	$1,000.00
	61 - 120 days	$1,250.00
	Over 120 days	$1,500.00

Tier II Requirements are listed in Appendix F to this Consent Decree. Any requirement under this Consent Decree not listed in Appendix F as a Tier II Requirement shall be classified as a Tier I Requirement for purposes of this Section.

25. Payment of stipulated penalties pursuant to this Section shall be made within thirty (30) days following written demand by EPA for payment of the penalties.

26. All stipulated penalties begin to accrue on the day that complete performance is due or a violation occurs, and continue to accrue through, and including, the day on which such violation or other noncompliance is remedied. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

27. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

28. Stipulated penalties shall continue to accrue as provided in Paragraph 26, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, DTPW and/or HTA shall pay the accrued penalties determined to be owing, together with interest, to the United States within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, DTPW and/or HTA shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) days of receiving the Court's decision or order, except as provided in subparagraph (c) below.

c. If any party appeals the District Court's decision, and the United States prevails in whole or in part, DTPW and/or HTA, shall pay all accrued penalties determined to be owing, together with interest, within sixty (60) days of receiving the final appellate court decision.

29. Stipulated penalties paid to the United States under this Section shall be paid by certified check payable to the "Treasurer of the United States," and tendered to the United States Attorney for the District of Puerto Rico. A copy of the check, the letter tendering such check, together with a report setting forth the computations made in determining such penalties, and a transmittal document identifying this action, the requirement(s) of this Consent Decree which

was not complied with, the date(s) of non-compliance, and the amount of payment shall be mailed to EPA and the United States Department of Justice at the addresses set forth in Section XI (Notices).

30. If DTPW and/or HTA fails to pay stipulated penalties according to the terms of this Consent Decree, DTPW and/or HTA shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961 accruing as of the date payment became due, plus the amount of the United States' reasonable costs, attorneys' fees or other expenses incurred in seeking payment of the civil or stipulated penalty. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the rights of the United States to seek additional remedies or sanctions, pursuant to other provisions of this Consent Decree or of any applicable statutes and regulations, including seeking injunctive or other relief for the failure by DTPW and/or HTA to implement Section V (Compliance Measures) of this Consent Decree. Where a violation of this Consent Decree is also a violation of the Act, DTPW and/or HTA shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. QUARTERLY PROGRESS REPORTS

31. Within thirty (30) days after the end of each calendar year quarter (i.e., by April 30, July 30, October 30, and January 30) after the date of lodging of the Consent Decree, until termination of the Consent Decree pursuant to the Section XXII (Termination), DTPW/HTA shall submit and make publicly available upon request a Quarterly Report for the preceding quarter ("Quarterly Report") that shall include narrative descriptions and appendices, as necessary, concerning the: status of any construction or compliance measures; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications, operation and maintenance, reports required by the Consent Decree or any applicable Permit, inspections and outfall monitoring, and all results of sampling.

32. The Quarterly Reports shall also include a description of any non-compliance (including delays) with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If DTPW/HTA violates, or has reason to believe that DTPW/HTA may violate, any requirement of this Consent Decree, DTPW/HTA shall notify the United States of such violation and its likely duration, in writing, within thirty (30) business days of the day DTPW/HTA becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, DTPW/HTA shall so state in the report. DTPW/HTA shall investigate the cause of the violation and shall then submit an amendment to the report within sixty (60) days of the date of the violation, including a full explanation of the causes of the violation. Nothing in this Paragraph or the following Paragraph relieves DTPW/HTA of its obligation to provide the notice required by Section X (Force Majeure) of this Consent Decree.

33. All reports shall be submitted to the persons designated in Section XI (Notices) of this Consent Decree. All reports may be submitted in electronic form to the United States and EPA, at the addresses designated in Section XI (Notices).

34. All Quarterly Reports and other submissions required pursuant to this Consent Decree shall be in English and signed by an official of the submitting party and include the following certification:

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

IX. QUARTERLY PROGRESS MEETINGS

35. Representatives of EPA and DTPW/HTA shall convene informally (including, as appropriate, representatives of PRASA, San Juan, DNER, and/or others), at least on a quarterly basis, pursuant to a mutually agreed-upon schedule, to discuss DTPW/HTA's ongoing progress under the Consent Decree. The meetings should cover at least the following subjects:

a. Progress on the implementation of the actions required by this Consent Decree, including but not limited to the Work Plan and Urgent Action Registry;

b. Potential problems that may adversely affect progress on implementing the actions required by this Consent Decree;

c. Measures that DTPW/HTA intend to take to correct problems and deficiencies encountered by DTPW/HTA or found by EPA in its inspections of any facility covered by this Consent Decree; and status of compliance with effluent limits.

36. If, as a result of discussions at the Quarterly Progress Meetings, EPA and DTPW/HTA agree on actions to be taken and a schedule for such actions that are not otherwise provided for in this Consent Decree, the Parties shall, after consultation with counsel, follow the procedure set forth in Section XIX (Modification).

X. FORCE MAJEURE

37. DTPW's and/or HTA's obligation to comply with one or more of the provisions of this Consent Decree shall be deferred or, in the sole discretion of EPA, excused, to the extent

that the delay in compliance or the non-compliance is caused by a "*force majeure*" event. "*Force majeure*," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of DTPW and/or HTA that delays or prevents the performance of any obligation or causes a non-compliance under this Consent Decree despite best efforts to fulfill the obligation. The requirement that DTPW and/or HTA exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* and best efforts to address the effects of any potential *force majeure* (i) as it is occurring; and (ii) following the potential *force majeure*, such that the delay is minimized to the greatest extent possible. "*Force majeure*" shall not include any delay due to unanticipated or increased costs of achieving and maintaining compliance with any provision of this Consent Decree or the financial inability of DTPW and/or HTA to implement any provision of this Consent Decree. The failure of DTPW and/or HTA to obtain any necessary permit or approval shall not be deemed a *force majeure* unless DTPW and/or HTA demonstrates that it exercised due diligence in promptly pursuing such permit application or approval. The Parties agree that, depending upon the circumstances related to an event and the response of DTPW and/or HTA to such circumstances, the kinds of events listed below are among those that could qualify as "*force majeure* events" within the meaning of this Section: fire, hurricane, flood, riot, terrorism, or other circumstances beyond the control of, and without the fault of DTPW and/or HTA, or any entity controlled by DTPW and/or HTA, including either DTPW's and/or HTA's consultants and contractors.

38. If any alleged *force majeure* event occurs or has occurred that may delay the performance or cause a non-compliance of any obligation under this Consent Decree, DTPW and/or HTA shall notify EPA no later than five (5) working days after DTPW and/or HTA first knew or should have known that the event might cause a delay. Within ten (10) days thereafter, DTPW and/or HTA shall provide in writing to EPA an explanation and description of the reasons for the delay or non-compliance; the anticipated duration of the delay or non-compliance; all actions taken or to be taken to prevent or minimize the delay or non-compliance; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or non-compliance or the effect of the delay or non-compliance; and reason(s) for attributing such delay to a *force majeure*, if DTPW and/or HTA intends to assert such a claim. Any written claim of a *force majeure* event shall be detailed and Facility-specific. DTPW and/or HTA shall include with any notice, all available documentation supporting the claim that the delay was attributable to a *force majeure*.

39. Failure to comply with the above procedures regarding notification and reporting shall preclude DTPW and/or HTA from asserting any claim of *force majeure* for that event for the period of time of such failure to comply, unless such failure to comply with the foregoing procedures regarding notification is itself attributable to a *force majeure* event. DTPW and/or HTA further agree that, notwithstanding giving notice to EPA within five (5) working days, any unreasonable delay in notifying EPA of an alleged *force majeure* event may hinder or preclude EPA from substantiating an assertion by DTPW and/or HTA that the delay in compliance or the non-compliance in question is attributable to a *force majeure* event.

40. If EPA agrees that the delay or non-compliance or anticipated delay or noncompliance is attributable to a *force majeure*, the time for implementation of the applicable portions of this Consent Decree that are affected by the *force majeure* will be extended by EPA

for a period to compensate for the delay resulting from such event, and stipulated penalties shall not accrue for such period. An extension of time for performance of the obligations affected by the *force majeure* shall not, of itself, extend the time for performance of any other obligation or toll the accrual of stipulated penalties for failure to perform such obligation. If EPA does not agree that the delay or non-compliance or anticipated delay or non-compliance has been or will be caused by a *force majeure*, EPA will notify DTPW and/or HTA in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure*, EPA will notify DTPW and/or HTA in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure*.

41. If DTPW and/or HTA elect to invoke the dispute resolution procedures set forth in Section XIV, with regard to a *force majeure* determination, it shall do so no later than thirty (30) days after receipt of EPA's written notice. In any such proceeding, DTPW and/or HTA shall have the burden of demonstrating by a preponderance of the evidence that the delay or non-compliance or anticipated delay or non-compliance has been or will be caused by a *force majeure*, that the duration of the delay or non-compliance or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid or mitigate the effects of the delay, and that DTPW and/or HTA complied with the requirements of this Section of the Consent Decree. If DTPW and/or HTA carry the burden, the delay at issue shall be deemed not to be a violation by DTPW and/or HTA of the affected obligation of this Consent Decree identified to EPA and to the Court.

XI. NOTICES

42. Whenever under the terms of this Consent Decree notice is to be given, or a report or other document is to be forwarded by one party to another, it shall be directed to the following addresses unless otherwise provided in this Consent Decree or unless the sending party has been advised by the receiving party that such notice and reports should be forwarded to a different individual or address. Any such materials shall be in English and shall include a reference to the name, caption and number of this action.

As to the United States:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

As to EPA:

Director, Caribbean Environmental Protection Division
United States Environmental Protection Agency
City View Plaza – Suite 7000
#48 RD 165 KM 1.2
Guaynabo, PR 00968-8069
font.jose@epa.gov (if by electronic means)

Chief, Water Compliance Branch
Unites States Environmental Protection Agency
Region 2
290 Broadway, 20th Fl.
New York, NY 10007
mckenna.douglas@epa.gov (if by electronic means)

and

Phyllis Feinmark, Esq.
United States Environmental Protection Agency
Region 2
290 Broadway, 16th Fl.
New York, NY 10007
feinmark.phyllis@epa.gov (if by electronic means

As to DTPW:

Secretary
Department of Transportation and Public Works
Box 41269, Minillas Station
San Juan, PR 00940-1269

Executive Director for Public Works
Department of Transportation and Public Works
Box 41269, Minillas Station
San Juan, PR 00940-1269

and

Legal Counsel
Department of Transportation and Public Works
Box 41269, Minillas Station
San Juan, PR 00940-1269

with copy to

Attorney General
Puerto Rico Department of Justice
PO Box 9020192
San Juan, PR 00902-0192

As to HTA:

Executive Director
Puerto Rico Highway and Transportation Authority
PO Box 42007, Minillas Station
San Juan, PR 00940-2007

and

Assistant Executive Director for Infrastructure
Puerto Rico Highway and Transportation Authority
PO Box 42007, Minillas Station
San Juan, PR 00940-2007

with copy to

Attorney General
Puerto Rico Department of Justice
PO Box 9020192
San Juan, PR 00902-0192

43. Delivery shall be considered complete upon deposit of the material at issue in the express mail, express courier service, or certified mail, or as otherwise specifically provided herein.

44. Documents required to be submitted under the terms of this Consent Decree may be submitted electronically, provided a paper copy is timely submitted to the Director of the Caribbean Environmental Protection Division in Puerto Rico.

XII. ACCESS TO THE FACILITIES

45. Nothing in this Consent Decree in any way limits any right of entry or access to DTPW/HTA's Facilities available to EPA pursuant to applicable federal or Commonwealth laws, regulations or permits.

XIII. RECORD RETENTION

46. Unless otherwise specified in this Consent Decree, DTPW/HTA shall preserve an original or an electronic copy of all records, logs, and documents required to be kept under the Clean Water Act, any applicable regulations promulgated thereunder, and pursuant to the provisions of this Consent Decree, for the DTPW/HTA MS4, for at least five (5) years after the termination of this Consent Decree, or as long as is required under the Act, regulation, or Permit, if longer. Drafts of documents for which a final version has been submitted to EPA pursuant to this Consent Decree need not be retained. Upon request by EPA, DTPW/HTA shall provide copies to EPA of any such records, logs and documents during the periods DTPW/HTA are required to preserve the original or copy of such records, logs, and documents. Provided,

however, that DTPW/HTA may eliminate documents after five (5) years upon written notice to EPA listing the documents DTPW/HTA plans to destroy and EPA's written approval. If EPA does not respond in writing within ninety (90) days of receiving such notice, DTPW/HTA may destroy such documents.

47. For purposes of this Section and of Section VII (Stipulated Penalties), DTPW/HTA shall be required to preserve at least the following records, logs and documents: Facility log books; Illicit Interconnection notices; computerized or other written maintenance management system files in which routine Facility maintenance information is loaded or otherwise recorded including job orders for corrective or preventive maintenance for the Facility; Inspection check list or report performed at the Facility, compiled daily, weekly, monthly, semi-annually, or annually, as applicable; and Police reports documenting employee security and/or vandalism-related incidents affecting the operation of the Facility.

XIV. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Failure by DTPW and/or HTA to seek resolution of a dispute under this Section shall preclude DTPW and/or HTA from raising any such issue as a defense to an action by the United States to enforce any obligation of DTPW and/or HTA arising under this Decree.

49. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when DTPW and/or HTA send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, DTPW and/or HTA invokes formal dispute resolution procedures as set forth below.

50. Formal Dispute Resolution. DTPW and/or HTA shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the position of DTPW and/or HTA and any supporting documentation relied upon by DTPW and/or HTA.

51. The United States shall serve its Statement of Position within forty-five (45) days of receipt of the Statement of Position of DTPW and/or HTA. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on DTPW and/or HTA, unless DTPW

and/or HTA files a motion for judicial review of the dispute in accordance with the following Paragraph.

52. DTPW and/or HTA may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XI (Notices) of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within twenty (20) days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

53. The United States shall respond to the motion of DTPW and/or HTA within the time period allowed by the Local Rules of this Court. DTPW and/or HTA may file a reply memorandum to the extent permitted by the Local Rules.

54. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 50 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, DTPW and/or HTA shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with the law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 50, DTPW and/or HTA shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the objectives of the Consent Decree.

c. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of DTPW and/or HTA under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 28. If DTPW and/or HTA do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

XV. COMPLIANCE WITH APPLICABLE LAWS

55. This Consent Decree in no way relieves DTPW and/or HTA of its responsibility to comply with all applicable federal, Commonwealth and local laws, regulations, and permits,

and compliance with this Consent Decree shall not constitute a defense to any action pursuant to said laws, regulations, or permits, except as otherwise provided in this Consent Decree or in the Clean Water Act. DTPW and/or HTA shall be responsible for obtaining all Commonwealth or local permits which are necessary for the performance of any obligations imposed in this Consent Decree. This Consent Decree shall not be construed as a determination of any issue related to any federal, Commonwealth, or local permit, nor shall it be construed to be an NPDES Permit or a modification of any NPDES Permit or other permit.

56. Nothing in this Consent Decree relieves DTPW and/or HTA from any requirements imposed on them relating to the Clean Water Act, laws of the Commonwealth of Puerto Rico, or any orders or Permits issued pursuant to the foregoing, except as otherwise provided in this Consent Decree or in the Clean Water Act.

57. In the Quarterly Meetings, the Parties agree to discuss significant changes in law and/or regulations and whether such changes may require modification of this Consent Decree pursuant to Section XIX (Modification).

XVI. EFFECT OF SETTLEMENT

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

59. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 58. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 58. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Facilities subject to this Consent Decree, whether related to the violations addressed in this Consent Decree or otherwise.

60. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to violations, DTPW and/or HTA shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 58 of this Section.

61. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. DTPW and HTA are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and compliance with this Consent Decree shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any

manner that compliance of DTPW and/or HTA with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §§ 1251 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

62. This Consent Decree does not limit or affect the rights of DTPW and/or HTA or the United States against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree against DTPW and/or HTA, except as otherwise provided by law.

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

XVII. COSTS OF SUIT

64. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States may be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any stipulated penalties due but not paid by DTPW and/or HTA.

XVIII. PUBLIC COMMENT

65. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. DTPW and HTA consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified DTPW and HTA in writing that it no longer supports entry of the Decree.

XIX. MODIFICATION

66. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this decree, it shall be effective only upon approval by the Court. A modification to release a party from this Consent Decree shall constitute a material change.

67. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIV (Dispute Resolution) of this Consent Decree, provided, however, that, instead of the burden of proof provided by Paragraph 54, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XX. RETENTION OF JURISDICTION

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

69. The United States retains the right to enforce the terms of this Consent Decree and to take any other action authorized by federal, Commonwealth or local law to achieve or maintain compliance with this Consent Decree.

XXI. EFFECTIVE DATE

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

XXIII. TERMINATION

71. After DTPW and/or HTA have satisfied the requirements of Section V (Compliance Measures) and all other requirements of this Consent Decree and have paid any accrued stipulated penalties as required by this Consent Decree, DTPW and/or HTA, as the case may be, may serve upon the United States a Request for Termination, stating that DTPW and/or HTA have satisfied those requirements, together with all necessary supporting documentation.

72. Following receipt by the United States of DTPW and/or HTA's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether DTPW and/or HTA have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

73. If the United States does not agree that the Decree may be terminated, DTPW and/or HTA may invoke Dispute Resolution under Section XIV (Dispute Resolution) of this Consent Decree. However, DTPW and/or HTA shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 50 of Section XIV (Dispute Resolution) of this Consent Decree, until three (3) months after service of the Request for Termination.

XXIII. SIGNATORIES/ SERVICE

74. Each undersigned representative of DTPW and HTA and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

75. This Consent Decree may be signed in counterparts, and its validity may not be challenged on that basis. DTPW and HTA agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIV. INTEGRATION

76. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than reports, plans, designs, or other submittals that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXV. FINAL JUDGMENT

77. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, DTPW, and HTA. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

SO ORDERED this __ day of _____, 2015.

_____
HON. CARMEN CONSUELO VARGAS DE CEREZO
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Municipality of San Juan., Civil No. 14-CV-1476 (CCC)

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division

Date: 12/23/2015

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Date: 12/16/15

CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Date: 12/14/15

ERIC SCHAAF
Regional Counsel
EPA Region II
290 Broadway, 17th Floor
New York, N.Y. 10007

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Municipality of San Juan, Civil No. 14-CV-1476 (CCC)

FOR DEFENDANT DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS OF THE COMMONWEALTH OF PUERTO RICO

Date: 12/14/2015

MIGUEL A. TORRES DÍAZ
Secretary
Department of Transportation and Public Works
of the Commonwealth of Puerto Rico

Date: 12/14/2015

YASMIN M. SANTIAGO ZAYAS
Legal Counsel
Department of Transportation and Public Works
of the Commonwealth of Puerto Rico

CÉSAR R. MIRANDA
Attorney General

Date: 12/15/2015

KARÍN G. DÍAZ-TORO
Torres & García, P.S.C.
Attorneys for the Commonwealth of Puerto Rico
PO Box 19539
San Juan, PR 00910-1539

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Municipality of San Juan, Civil No. 14-CV-1476 (CCC)

FOR DEFENDANT THE PUERTO RICO HIGHWAY AND TRANSPORTATION AUTHORITY AND THE COMMONWEALTH OF PUERTO RICO IN CONFORMANCE WITH SECTION 309(e) OF THE CLEAN WATER ACT

Date: 12/14/2015

CARMEN A. VILLAR PRADOS
Executive Director
Highway and Transportation Authority

CÉSAR R. MIRANDA
Attorney General

Date: 12/15/2015

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