UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED
OCT 15 2013
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

UNITED STATES OF AMERICA,	§	
	§	
and	§	Civil Action No. 5:13-cv-00666-DAE
	§	
STATE OF TEXAS,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
SAN ANTONIO WATER SYSTEM,	§	
	§	
Defendant.	§	
	§	

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America ("United States"), acting at the request and on behalf of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this action concurrently with this Consent Decree alleging that the San Antonio Water System ("SAWS") has violated the Federal Water Pollution Control Act, also known as the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq., and the regulations promulgated thereunder;

WHEREAS, Plaintiff, the State of Texas, acting at the request of and on behalf of the Texas Commission on Environmental Quality ("TCEQ"), has joined in the Complaint, seeking injunctive relief and Civil Penalties for SAWS alleged violations of the Texas Water Quality Control Act ("TWQCA"), Tex. Water Code § 26.001 et seq., and the regulations promulgated pursuant thereto;

WHEREAS, TCEQ has been authorized by EPA to administer the National Pollutant Discharge Elimination System ("NPDES") program in Texas pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b);

WHEREAS, the State of Texas is a Plaintiff in this action pursuant to CWA § 309(e), 33 U.S.C. § 1319(e);

WHEREAS, SAWS is responsible for wastewater collection and treatment in a service area that includes the City of San Antonio and that covers approximately 421.3 square miles and serves a population of approximately 1.3 million people;

WHEREAS, the SAWS Wastewater Collection and Transmission System ("WCTS") consists of approximately 5160 miles of Gravity Sewer Mains, approximately 670 miles of which are located over the Edwards Aquifer Recharge Zone (EARZ) and subject to specific management requirements pursuant to Texas state law;

WHEREAS, SAWS is the holder of NPDES permits authorizing the discharge of pollutants to waters of the United States and State water from its Medio Creek, Leon Creek, Salado Creek and Dos Rios Wastewater Treatment Plants ("WWTPs") and from Mitchell Lake;

WHEREAS, SAWS has reported to TCEQ overflows from the WCTS that the United States and the State of Texas allege are violations of the CWA, the TWQCA, and SAWS NPDES Permits;

WHEREAS, SAWS has continued to report to TCEQ large volume overflows from the WCTS since the March 2011 EPA inspection, including at least the following in 2012:

Approximately 220,000 gallons on February 18, 2012,

Over 100,000 gallons on March 18, 2012,

Over 100,000 gallons on June 5, 2012,

Over 100,000 gallons on August 27 to 28, 2012,

Approximately 120,600 gallons on September 29–30 and October 1, 2012, and

Approximately 63,000 gallons on December 5, 2012;

WHEREAS, SAWS has been implementing SSO reduction programs consistent with the terms of this Consent Decree that SAWS contends have resulted in a decrease in the annual number of SSOs since the March 2011 EPA inspection as compared to the year preceding the EPA inspection;

WHEREAS, SAWS owns and operates the wastewater collection and treatment system and the wastewater treatment plants;

WHEREAS, SAWS represents that it has authority to fully implement its obligations under this Consent Decree, and that it has provided a copy of this Consent Decree to the City Attorney for the City of San Antonio prior to SAWS execution of this Decree;

WHEREAS, the Parties acknowledge that the SAWS Board of Trustees has been vested with "absolute and complete authority and power to control, manage and operate the [sewer] System" with the exception that the City Council must approve rates charged for services pursuant to San Antonio City Ordinance No. 75686;

WHEREAS, the Parties acknowledge the City of San Antonio's obligations to set sewer rates and provide funding for SAWS pursuant to Texas Government Code Title 9, Subtitle J, Section 1502.057;

WHEREAS, the Parties acknowledge the City of San Antonio's obligations related to private laterals pursuant to the City Code of Ordinances, Article V, §§ 34-442, 34-446, 34-447, 34-448, 34-449, and 34-450;

WHEREAS, SAWS has been implementing a number of programs to upgrade, operate and maintain its wastewater collection system to prevent and respond to overflows;

WHEREAS, SAWS does not admit any facts or liability to the United States, the State or any third party arising out of the transactions or occurrences alleged in the Complaint, but SAWS has agreed for purposes of settlement to add to these programs and expand or modify certain of these programs as part of its obligations under this Consent Decree;

WHEREAS, the Parties desire to avoid further litigation and to work cooperatively on issues relating to SAWS wastewater collection and transmission system;

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

NOW, THEREFORE, IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follows:

I. JURISDICTION & VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to Sections 309(b) and 504(a) of the CWA, 33 U.S.C. §§ 1319(b) and 1364(a), and 28 U.S.C. §§ 1331, 1345 and 1355, and over the Parties. Venue lies in this District, pursuant to Section 309(b) of the CWA, 33 U.S.C. §§ 1319(b) and 28 U.S.C. § 1391(b), because it is the judicial district where SAWS is located. For purposes of this Decree, or any action to enforce this Decree, SAWS does not dispute the Court's jurisdiction over SAWS, this Decree, and any such action, and further does not dispute venue in this judicial district. Notice of commencement of this action has been given to the State of Texas pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

II. APPLICABILITY

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

3. No transfer of ownership or operation of the WCTS or any portion thereof, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve SAWS of its obligation to ensure that the provisions of this Decree are implemented. At least thirty (30) days prior to any transfer of ownership or operation of its publicly owned treatment works and/or WCTS, SAWS shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement to transfer ownership or operation, to the United States and the State, in accordance with Section XV (Notices).

4. SAWS shall provide a copy of this Consent Decree, or otherwise make it available to each engineering, consulting and contracting firm to be retained to perform any activities

required by this Consent Decree upon execution of any contract relating to such Work, and each engineering, consulting, and contracting firm already retained for such purpose.

5. In any action to enforce this Consent Decree, SAWS shall not raise as a defense the failure by any of its officers, directors, employees, agents or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

6. All plans, measures, reports, construction, maintenance, operational requirements and other obligations required by this Consent Decree shall have the objective of causing SAWS to achieve and maintain compliance with the CWA, the TWQCA, and the regulations promulgated thereunder, including the elimination of SSOs.

IV. DEFINITIONS

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

a. "Building/Private Property Backup" shall mean, for purposes of this Consent Decree, a wastewater backup into a building that is caused by blockages, malfunctions or flow conditions in the WCTS. Building/Private Property Backup does not include wastewater backup into a building that is caused by a blockage or other malfunction of a Private Lateral or other piping or conveyance system that SAWS does not own or operate.

b. "Calendar Year" shall mean the twelve (12)-month period starting on January 1 and ending on December 31.

c. "Capacity Constraint" means those discrete components, or groups of components, of the WCTS that are determined by SAWS, consistent with the Capacity Program in Appendix D, to have verified capacity deficiency issues that have caused or significantly contributed to previous capacity-related SSOs due to wet weather events that are within design parameters; and/or, that are likely to cause or significantly contribute to future capacity-related SSOs due to wet weather events that are within design parameters. As described in Appendix D, potential Capacity Constraints include Priority 1 through 4 and may include Priority 5.

d. "CCTV" shall mean closed circuit television.

e. "City" shall mean the City of San Antonio, a Texas home rule city.

f. "Clean Water Act" or "CWA" shall mean the Clean Water Act, formally entitled the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387.

g. "Consent Decree" or "Decree" shall mean this Consent Decree and all Appendices attached hereto (listed in Section XXIII (Integration/Appendices)).

h. "Date of Entry" shall mean the date on which the United States District Court for the Western District of Texas signs and enters the Consent Decree on its docket.

i. "Date of Lodging" or "Lodging" shall mean the date on which this Consent Decree is filed for lodging with the Clerk of the United States District Court for the Western District of Texas.

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

k. "Deliverable" shall mean any written document required to be submitted by or on behalf of SAWS to EPA and/or TCEQ pursuant to this Decree.

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

m. "FOG" shall mean fats, oils and grease.

n. "FOG Control Device" shall mean any grease interceptor, grease trap, or other mechanism, device, or process, which attaches to, or is applied to a FOG Generator's wastewater plumbing fixtures and lines, the purpose of which is to collect, contain, or remove fats, oils and grease from the waste stream of a FOG Generator prior to discharge into the WCTS.

o. "FOG Control Program" or "Fats, Oils, and Grease Control Program" shall mean SAWS program to control the discharge of FOG from Food Service Establishments consistent with the San Antonio City Council's May 12, 2011 Ordinance.

p. "FOG Generator" shall mean any Food Service Establishment or Food Processing Establishment, as defined in Section 34-525(c) of the San Antonio City Code, that is subject to regulation under Chapter 34, Division 5, Section 34-525 of the San Antonio City Code (the San Antonio Fats, Oil, and Grease Regulation).

q. "Force Main" shall mean any pipe that receives and conveys, under pressure, wastewater from the discharge side of a pump. A Force Main is intended to convey wastewater under pressure.

r. "Gravity Sewer Main" or "Gravity Sewer" shall mean a pipe that receives, contains and conveys wastewater not normally under pressure, but intended to flow unassisted under the influence of gravity.

s. "Infiltration" as defined by 40 C.F.R. § 35.2005(b)(20) shall mean water other than wastewater that enters the WCTS (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections or manholes. Infiltration does not include and is distinguished from Inflow.

t. "Inflow" as defined by 40 C.F.R. § 35.2005(b)(21) shall mean water other than wastewater that enters the WCTS (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm water, surface runoff, street wash waters, or drainage. Inflow does not include and is distinguished from Infiltration.

u. "I/I" shall mean the total quantity of water from inflow, infiltration, and rainfall induced infiltration without distinguishing the source.

v. "Interest" shall mean interest at the rate specified in 28 U.S.C. § 1961. Unless otherwise stated, the applicable rate of interest shall be the rate in effect at the time the interest accrues.

w. "Large Diameter Gravity Sewer Mains" shall mean Gravity Sewer Mains that are twenty-four (24) inches or greater in diameter.

x. "Lift Station" shall mean facilities in the WCTS (not at the WWTPs) comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that Lift Station.

y. "Paragraph" shall mean a portion of this Consent Decree identified by Arabic numerals.

z. "Parties" shall mean the United States, the State and SAWS.

aa. "Pipe Segment" shall mean the reach of Gravity Sewer Main extending from manhole to manhole.

bb. "Private Lateral" shall mean that portion of the collection system or sanitary sewer system, not owned by SAWS, used to convey wastewater from a building or buildings to that portion of the WCTS owned by SAWS.

cc. "Remedial Measures" shall mean spot repairs, trenchless sewer rehabilitation, sewer replacement, repair or reconstruction, and any other appropriate WCTS improvement techniques for resolving condition and/or capacity deficiencies in a particular system asset or group of assets within the WCTS that have caused or significantly contributed to previous SSOs; and/or, that are likely to cause or significantly contribute to the future occurrence of SSOs. Remedial Measures shall not include capital improvement projects implemented exclusively to provide sewer service for new development.

dd. "SAWS" shall mean the San Antonio Water System, an agency of the City of San Antonio, Texas.

ee. "Sanitary Sewer Overflow" or "SSO" shall mean, for purposes of this Consent Decree: 1) unpermitted discharges from SAWS WCTS to State water or waters of the United States; and 2) any release of wastewater from SAWS WCTS to public or private property that does not reach State water or waters of the United States, including Building/Private Property Backups.

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

gg. "Small Diameter Gravity Sewer Mains" shall mean Gravity Sewer Mains that are less than twenty-four (24) inches in diameter.

hh. "State" shall mean the State of Texas.

ii. "Subparagraph" shall mean a portion of a paragraph identified by lowercase letters.

jj. "Subsection" shall mean a portion of this Consent Decree identified by capital letters.

kk. "TCEQ" shall mean the Texas Commission on Environmental Quality and any of its successor departments or agencies.

ll. "TPDES Permit" shall mean the four Texas Pollutant Discharge Elimination System permits issued to SAWS for the WWTPs to which the WCTS conveys wastewater, specified as the following: Salado Creek – TPDES Permit No. WQ0010137008; Medio Creek – TPDES Permit No. 0010137040; Leon Creek – TPDES Permit No. 0010137003; and Dos Rios – TPDES Permit No. 0010137033; and any future extended, modified or reissued permits thereto as defined herein.

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

nn. "Wastewater Collection and Transmission System" or "WCTS" shall mean the wastewater collection, retention and transmission system, including all Force Mains, Gravity Sewer Mains, Lift Stations, manholes and other appurtenances thereto which are owned by SAWS, including any new assets constructed under this Decree to resolve condition and/or capacity issues identified that have caused or significantly contributed to previous SSOs; and/or, that are likely to cause or

significantly contribute to the future occurrence of SSOs.

oo. "Wastewater Treatment Plant" or "WWTP" shall mean devices or systems used in the storage, treatment, recycling and reclamation of municipal wastewater. For purposes of this Consent Decree, this definition shall refer to the following treatment facilities: the Leon Creek WWTP, the Medio Creek WWTP, the Salado Creek WWTP and the Dos Rios WWTP, and all components of such sewage treatment plants.

pp. "Wet Weather-Related SSOs" shall mean historical SSOs identified by SAWS as capacity or I/I-related or that occurred during wet weather events.

qq. "Work" shall mean the activities SAWS is required to perform under this Consent Decree.

V. COMPLIANCE REQUIREMENTS

8. Upon the Date of Lodging of this Consent Decree, SAWS shall initiate the Work pursuant to this Consent Decree on the schedules specified herein and consistent with Section III, Paragraph 6. All Work under this Consent Decree shall be performed based upon good engineering practices, SAWS best professional judgment and industry standards in compliance with the terms of this Decree and its Appendices. In conducting Work after May 31, 2013 under this Decree, SAWS shall consider as a factor the location of SSOs in low income census tract areas, as well as other appropriate factors specified in this Consent Decree and its Appendices.

Section V (Compliance Requirements) contains the following Subsections: (A) WCTS Capacity, Management, Operation, and Maintenance (CMOM) Program, (B) Early Action Program, (C) Condition Assessment and Remedial Measures Program, (D) Capacity Assessment and Remedial Measures Program, (E) Lift Station Rehabilitation and Elimination Program, (F) Force Main

Assessment Program, (G) Portion of the WCTS Located in EARZ, (H) WWTP Effluent Violation Corrective Actions and (I) Water Quality Program.

A. WCTS CMOM PROGRAM

9. SAWS has been and is implementing a variety of sewer system CMOM-related programs. SAWS shall develop a written CMOM Program to address the requirements of this Subsection V(A) consistent with EPA's 2005 Guidance titled "Guide for Evaluating Capacity, Management Operation and Maintenance Programs at Sanitary Sewer Collection Systems" and shall submit it to EPA for review and approval no later than one (1) year from the Date of Lodging of this Consent Decree. The CMOM Program shall include written descriptions of the following provisions:

10. Training Program. The Training Program shall include technical and skills training for appropriate categories of SAWS employees. The training shall be directly related to operation and maintenance of the sanitary sewer collection system for the purpose of responding to and preventing SSOs.

a. Technical and Skills Training. The technical and skills training program shall be designed to facilitate compliance with the Clean Water Act (CWA) regarding SSO prevention and response and shall include the following:

i. A list and description of the categories of employees that will be provided training in specific topics related to SSO prevention and response measures that can be addressed through operation and maintenance of the collection system, with the specified training commensurate with the specific job responsibilities of each category of employee;

ii. A list and description of the topics to be covered in the technical and skills

training for each relevant category of employee (including, where appropriate, training on sewer cleaning, FOG inspection, collection system inspection, collection system repair, replacement and rehabilitation techniques, data collection, information management, reporting and recordkeeping necessary to implement SAWS CMOM Program). The list of SAWS employee training categories and description of the technical and skills training to be covered for each relevant category of employee is attached as Appendix A;

iii. A description of how the training relates to any applicable employee certification required by State or federal law; and,

iv. Identification of the types of training records that SAWS maintains and of the information management system used to plan and document completed training.

11. Capacity Assurance Program. SAWS requirements under this Consent Decree with regard to Capacity Assurance are specified in the Capacity Assessment and Remedial Measures provisions under Subsection V(D). The written CMOM Program shall describe SAWS plans to periodically reassess existing and future capacity of the WCTS following completion of and in a manner consistent with the Capacity Assessment and Remedial Measures Program described in Appendix D, as modified from time to time based on adaptive management principles, subject to the provisions of Section XVIII regarding modifications of the terms of the Consent Decree. SAWS shall give priority in this Capacity Assurance Program to prevention of SSOs.

12. Sewer Reporting and Documentation Procedures. As part of the CMOM Program, SAWS shall evaluate its SSO reporting and documentation procedures, and modify such

procedures as necessary to satisfy the requirements of Subparagraphs 12.a to 12.f below. SAWS modified procedures shall be described in the written CMOM Program to be submitted no later than one (1) year from the Date of Lodging. In addition to providing a written summary of SAWS sewer reporting and documentation procedures in the CMOM Program, SAWS shall begin providing the following reports to EPA ("EPA Reports") within ninety (90) days of Lodging:

a. SAWS shall provide EPA a copy of the monthly compliance report required by its TPDES permits at the same time it is submitted to TCEQ;

b. SAWS shall provide EPA a copy of any five-day report submitted under its TPDES permit at the same time it is submitted to TCEQ; and

c. SAWS shall provide EPA with an Annual Report, as described in Paragraph 52 of this Consent Decree, containing the following information for each SSO:

   i. Location of the SSO by street address, asset identification number or any other appropriate method (i.e., by latitude and longitude);

   ii. Name of the receiving water, if applicable;

   iii. An estimate of the volume (in gallons) of sewage discharged and recovered;

   iv. Description of the collection system component from which the SSO was released (e.g., manhole, gravity main, pump station wet well, etc.);

   v. Description of the overflow's potential impact, if any, on public health and to water quality in the receiving water body;

   vi. Cause or suspected cause of the SSO;

   vii. Description of whether the SSO is a repeat SSO (defined as an SSO that

occurred at the same Pipe Segment within the past twenty- four (24) months), including the date of the last SSO that occurred at the same location;

viii. Estimated date and time when the overflow began and stopped or the anticipated time the SSO is expected to discontinue;

ix. Steps taken to respond to the SSO;

x. Steps taken to reduce, eliminate and prevent reoccurrence of the SSO, including a summary of when such steps were taken or are planned; and

xi. Report of all notifications to the public and other agencies or departments, as required by law or regulation.

d. The Annual Report shall also include any information that SAWS obtained or received (e.g., customer complaints) regarding discharges from Private Laterals, including any information received specifying the location of the discharge, a description of the circumstances of the discharge and a description of how the discharge was remediated.

e. SAWS shall maintain records of the EPA SSO Reports described above for a period of five (5) years from the date of submittal of such Report to EPA. In addition to maintaining these records, SAWS shall also maintain records reflecting the actions SAWS has taken and will take to prevent the SSO from recurring and a timeframe for undertaking those steps, including any work orders or similar records associated with investigation and/or repair of problems related to SSOs.

f. SAWS shall maintain a list and description of complaints from customers or others regarding SSOs that occur from the Date of Lodging through December 31 of the

Calendar Year of Lodging and thereafter for each Calendar Year during the term of this Decree.

g. SAWS shall implement the procedures and requirements set forth above in Subparagraphs 12.a to 12.e within ninety (90) days of the Date of Lodging of the Consent Decree. Following the ninety (90)-day deadline, SAWS shall provide notice in accordance with Section XV (Notices) and certify in accordance with Section XIX (Certification) to EPA that the SSO reporting and documentation procedures are being implemented.

13. Sewer Overflow Response Plan ("SORP"). No later than 150 days from the Date of Lodging of the Consent Decree, SAWS shall develop, submit to EPA for review and comment, and implement a SORP that is designed to accomplish the following goals:

a. Respond to and halt SSOs as rapidly as technically feasible consistent with safety and legal requirements;

b. Employ SSO mitigation measures whenever appropriate;

c. Implement appropriate measures to prevent SSO recurrence; and

d. Incorporate in the SORP procedures for responding to SSOs and procedures to minimize the environmental impact and potential human health risk of SSOs. At a minimum, the SORP shall include the following:

i. A description of the actions SAWS will undertake to provide notice to the public (through the local news media or other means, including signs or barricades to restrict access) and to any applicable government authorities of the SSO from the WCTS when such notice is required by SAWS TPDES permits or applicable law;

ii. A detailed description (including, as appropriate, the development of standard response procedures) to minimize the volume of untreated wastewater from the WCTS during an SSO event;

iii. A detailed plan describing the standard operating procedures to be followed by SAWS personnel in responding to a Building/Private Property Backup, including:

1. A description of SAWS response practices and methods for communicating with customers about:

A. How to report Building/Private Property Backups; and

B. How to obtain cleanup support from SAWS, as warranted;

2. The typical timeframe objectives for both initial response and completion of cleanup activities; and

3. The types of measures that may be taken by SAWS to cleanup Building/Private Property Backups found to be caused by conditions in SAWS WCTS, including, as warranted by specific circumstances, procedures necessary to disinfect and/or remove items potentially contaminated by Building/Private Property Backups, wet vacuuming or other removal of spillage, wiping floors and walls with cleaning solution and disinfectant, flushing out and disinfecting plumbing fixtures, carpet cleaning and/or replacement or other appropriate measures to disinfect and/or remove items potentially contaminated by Building/Private Property Backups.

iv. A description of the process by which measures to correct or repair

conditions in the WCTS causing or contributing to Building/Private Property Backups are selected;

v. An inspection of each sewer pipe that experiences an SSO using CCTV, Pole Camera or other appropriate inspection methods as soon as practicable, but not later than forty-eight (48) hours following the cessation of the SSO. In general, such inspection shall typically involve the first adjacent Pipe Segment upstream and downstream of the specific WCTS asset experiencing an SSO;

vi. A description of how SAWS will complete cleanup activities of SSOs greater than 10,000 gallons, including:

1. Time frame for completion of SSO cleanup activities;
2. Photographic evidence that SSO cleanup is complete; and
3. Supervisor approval to confirm that the SSO cleanup is complete.

vii. A description of standard response procedures for SSOs that occur at Lift Stations or Force Mains. In the event that a repair at a Lift Station or Force Main may cause or lengthen the time of an SSO, the SORP shall provide a procedure for determining when a wastewater pump-around will be provided.

14. System-Wide Cleaning Program. Within ninety (90) days after the Date of Lodging of the Consent Decree, SAWS shall continue to implement its sewer collection system cleaning program as specifically set forth below and as described in Appendix B. For purposes of this Paragraph, cleaning is defined as removal from the gravity sewer system of FOG, debris, roots and/or any other obstructions that have caused or significantly contributed to previous SSOs;

and/or, that are likely to cause or significantly contribute to the future occurrence of SSOs. All cleaning activities conducted by SAWS since January 1, 2009 shall be credited towards compliance with these requirements.

a. Small Diameter Gravity Sewer Main Cleaning Program. For Small Diameter Gravity Sewer Mains, SAWS shall clean all such pipes on a 10-year cycle. SAWS shall clean a minimum of twelve (12) percent of Small Diameter Gravity Sewer Mains each Calendar Year (prorated for any partial Calendar Year after Lodging in which these requirements apply). SAWS may count Small Diameter Gravity Sewer Main Cleaning and Repeat Gravity Sewer Main Cleaning to comply with the twelve (12) percent annual requirement.

b. Repeat ("Hot Spot") Gravity Sewer Main Cleaning Program. SAWS shall implement its Repeat Cleaning Program at the areas and with the frequencies that are determined to be appropriate based on SSO information, CCTV findings and previous sewer cleaning findings. SAWS Repeat Cleaning Program shall be conducted consistent with Appendix B (Cleaning Program).

c. Large Diameter Gravity Sewer Main Cleaning Program. For Large Diameter Gravity Sewer Mains, SAWS shall clean all such pipes on a ten (10)-year cycle as warranted. SAWS shall clean each Large Diameter Gravity Sewer Main Pipe Segment that SAWS determines based on inspection results and other analyses to have a depth of debris in any part of that Pipe Segment that exceeds twenty (20) percent of the pipe diameter unless the hydraulic modeling performed by SAWS confirms that the depth of debris present will not constitute a Capacity Constraint as defined in this Consent Decree. Those pipes determined to have a depth of

debris exceeding twenty (20) percent, but were not cleaned, shall be visually re-checked no less often than once every five (5) years to monitor ongoing grit/debris build-up and respective influences on hydraulic capacity; and shall be cleaned as frequently as warranted to prevent the development of Capacity Constraints that are likely to cause or significantly contribute to the future occurrence of SSOs.

15. Condition Assurance Program. SAWS requirements under this Consent Decree with regard to Condition Assessment and associated Remedial Measures are specified under Subsection V(C) of this Decree. The written CMOM Program shall describe SAWS plans to periodically reassess the condition of the WCTS following completion of and in a manner consistent with the Condition Assessment and Remedial Measures Program described in Appendix C as modified from time to time based on adaptive management principles, subject to the provisions of Section XVIII regarding modifications of the terms of this Consent Decree. SAWS shall give priority in this Condition Assurance Program to prevention of SSOs.

16. Lift Station Operation and Maintenance Program. SAWS is currently performing Lift Station operation and maintenance programs. SAWS shall continue to perform these programs as part of the CMOM Program. In order to minimize the risk of future SSOs at Lift Stations, SAWS shall review its current Lift Station operation and maintenance procedures and shall include an updated description of these procedures in the written CMOM Program as appropriate. The Lift Station Operation and Maintenance Program shall include procedures for reading and recording relevant information appropriate to proper operation and maintenance for Lift Stations, including where appropriate, pump run-time meter readings, pump control settings, SCADA operation, wetwell float levels, grease accumulations and other information that is necessary for the proper operation of SAWS Lift Stations.

17. Private Lateral Program. The Parties acknowledge the City of San Antonio's authority pursuant to City Code § 34-447(a) that provides that "[t]he improper maintenance and repair of sewer laterals is found to constitute a public health hazard" and provides for service of written notification to owners of Private Laterals to abate the condition causing the health hazard within three (3) days of the notification (City Code § 34-448). If the owner of the Private Lateral does not repair or replace the faulty Private Lateral, the Parties further acknowledge that the City is authorized to institute a criminal prosecution to assess a fine as provided in City Code § 34-449 and that the City is authorized to seek an order to terminate water service to the premises where the Private Lateral is located (City Code § 34-450). To provide the City of San Antonio notice to address Private Laterals that have not been properly maintained or repaired by the owners of the Private Laterals pursuant to its ordinances regarding Private Laterals as specified in the City Code of Ordinances, Article V, §§ 34-442, 34-446, 34-447, 34-448, 34-449, and 34-450, SAWS shall do the following:.

a. Inform the City of damaged/improperly maintained Private Laterals whenever SAWS obtains information regarding damaged/improperly maintained Private Laterals.

b. To foster coordination between SAWS and the City regarding Private Laterals, SAWS shall request that the City provide to SAWS each month a report of:

i. Addresses receiving notifications issued by the City pursuant to City Code § 34-448;

ii. Addresses of each Private Lateral that has been repaired following a notification issued pursuant to City Code § 34-448 and the date of completion of any such repair; and

iii. Addresses of each connection for which the City is seeking to assess a fine pursuant to City Code § 34-449 and the address of each such connection in which the City is seeking to terminate water service pursuant to a hearing as provided in City Code § 34-450.

18. Fats, Oils and Grease ("FOG") Control Program. SAWS has implemented and continues to conduct a FOG Control Program. As part of the CMOM Program, SAWS continuing FOG Control Program shall include the following:

a. The legal authority within the jurisdiction of the City of San Antonio to control the discharge of FOG into the WCTS, including the ability to implement an enforcement program;

b. Establishment of FOG Control Device management, operations and maintenance best management practices that address onsite recordkeeping requirements, cleaning frequency, cleaning standards, use of additives and ultimate disposal;

c. Routine compliance inspection procedures, including scheduling, inspection report forms and inspection recordkeeping requirements to assure that FOG Control Devices are being managed, operated and maintained in accordance with the established management, operations and maintenance standards or best management practices;

d. An enforcement program, including specific enforcement mechanisms, to ensure compliance with the FOG Control Program;

e. A compliance assistance program to facilitate training of FOG Generators and their employees;

f. A public education program directed at reducing the amount of FOG entering the

WCTS from private residences;

g. Staffing (technical and legal) and equipment requirements to ensure effective implementation of the FOG Control Program;

h. A tiered inspection frequency schedule that shall identify the number of regulated commercial establishment FOG Generators in each tier and the frequency of inspection for each tier, at the time the CMOM document is finalized, including an explanation of the tiered frequency of inspection schedule and SAWS plan for inspecting all FOG Generators at least once every two (2) years;

i. Establishment of performance indicators to be used by SAWS to measure the effectiveness of the FOG Control Program and establish a periodic review in order to update the FOG Control Program as warranted; and,

j. A description of City of San Antonio programs that complement the SAWS FOG Control Program, including the specification of accepted FOG control devices as written and enforced by the City, standards for the design and construction of FOG control devices developed and enforced by the City, and construction inspection protocols established and implemented by the City.

19. Inventory. SAWS shall provide a written description of its WCTS component and equipment inventory system, including information obtained during the Condition and Capacity Assessment Programs that is used to update Geographic Information System ("GIS") attributes, and shall continue to implement this system as part of the CMOM Program.

20. Condition Work to be Performed Under the CMOM Program. All WCTS asset condition inspection and assessment Work performed by SAWS after the Date of Lodging pursuant to Paragraphs 23 through 27 within forty-eight (48) months from the Date of Lodging shall be

addressed in the Condition Assessment Report, if applicable, and to the extent applicable, such Work is subject to the requirements of the Remedial Measures Alternatives Analyses and Remedial Measures Plan requirements that are described in Paragraphs 29 and 30. All such asset condition inspection and assessment Work performed after forty-eight (48) months from the Date of Lodging and the Remedial Measures resulting from that inspection and assessment Work shall be addressed under the CMOM Program and a summary of such Work and Remedial Measures shall be included in the Annual Report for the Calendar Year in which these tasks were completed. Work that will be performed after submittal of the Condition Assessment Report shall include Condition Assessment, Condition Remedial Measures Alternatives Analyses, and Condition Remedial Measures Plan development, in accordance with Subsection V(C), as applicable, for the following WCTS assets:

a. Pipe Segments of Small Diameter Gravity Sewer Mains where visual inspections are completed after forty-eight (48) months from Date of Lodging; and

b. Manholes where inspections are completed after forty-eight (48) months from Date of Lodging.

B. EARLY ACTION PROGRAM

21. SAWS is currently implementing Remedial Measures within the WCTS to address previously identified structural defects and Capacity Constraints that have caused or significantly contributed to previous SSOs; and/or, that are likely to cause or significantly contribute to the future occurrence of SSOs. The implementation of such Remedial Measures shall continue as specified in this Paragraph while SAWS conducts the system-wide Condition Assessment and Capacity Assessment Programs required under Subsections V(C) and V(D), and as reflected in Appendices C and D, respectively. All Remedial Measures that are to be implemented as set

forth below are referred to as the Early Action Program. SAWS shall implement the Early Action Program in accordance with the following requirements.

a. Phase I Early Action Program.

i. Appendix F presents a list of projects that were identified by SAWS prior to January 1, 2013 to address identified structural defects and Capacity Constraints. SAWS shall complete all identified projects in Appendix F as follows:

1. For Small Diameter Condition Remedial Measures, within a period of thirty-six (36) months from the Date of Lodging;

2. For Large Diameter Condition Remedial Measures, within a period of sixty (60) months from Date of Lodging; and

3. For Large Diameter Capacity Remedial Measures, within a period of seventy-two (72) months from Date of Lodging.

ii. As part of Appendix F, SAWS has provided to EPA a general description of the Remedial Measures to be performed in the Phase I Early Action Program.

b. Phase II Early Action Program.

i. As of January 1, 2013 and continuing through the first eighteen (18) months after the Date of Lodging as part of SAWS ongoing Condition and Capacity Assessment Programs, SAWS shall identify and maintain a list of all assets where structural defects and/or potential Capacity Constraints in those assets have caused or significantly contributed to previous SSOs; and/or, are likely to cause or significantly contribute to the future

occurrence of SSOs, consistent with Appendices C and D, respectively.

ii. No later than twenty-four (24) months following Date of Lodging, SAWS shall submit in a format consistent with Appendix F a Phase II Early Action Program identifying those Remedial Measures prioritized and selected for Phase II and summarizing the categories of assets where structural defects and/or Capacity Constraints have caused or significantly contributed to previous SSOs; and/or, are likely to cause or significantly contribute to the future occurrence of SSOs and have been evaluated for Remedial Measures Alternatives Analyses consistent with Appendices C and D, respectively. Additionally, SAWS shall provide:

1. For each Pipe Segment where structural defects will be remediated: a summary of the investigation technique(s) employed to identify the Remediation Measures required; the NASSCO PACP Quick Rating of the existing Pipe Segment; and, the SAWS Condition Assessment Category of the existing Pipe Segment determined in accordance with Appendix C.

2. For each Pipe Segment where a Capacity Constraint will be remediated: the full-pipe hydraulic capacity of the existing Pipe Segment; the full-pipe hydraulic capacity of the remediated Pipe Segment; and the minimum hydraulic capacity required for the Pipe Segment to transport the SAWS assessment storm as predicted by SAWS hydraulic model in accordance with Appendix D;

3. An overview map of Phase II Early Action Program Work with

project locations.

iii. SAWS shall complete all identified projects in the Phase II Early Action Program as follows:

1. For Small Diameter Condition Remediation Measures, within a period of sixty (60) months from the Date of Lodging;

2. For Large Diameter Condition and/or Capacity Remedial Measures, within a period of sixty (60) months from the date that the Phase II Early Action Program is submitted pursuant to Subparagraph 21.b.ii.

c. Reporting and Modification.

i. For both of the Phase I and Phase II Early Action Programs, SAWS shall report project status and completion date of this Work in its Annual Report and shall also report the date of SAWS notice to proceed to a contractor or work order to SAWS crews for any multi-year projects in accordance with Section VI (Reporting Requirements) of this Consent Decree.

ii. Modifications to the planned Phase I and Phase II Remedial Measures and/or the implementation schedules for those Remedial Measures shall be in accordance with Section XVIII (Modification) of this Consent Decree.

C. CONDITION ASSESSMENT AND REMEDIAL MEASURES PROGRAM

22. SAWS shall conduct a system-wide inspection and assessment of the structural condition of its Gravity Sewer Mains and manholes within the WCTS by implementing the Condition Assessment requirements of this Section. The system-wide inspection and assessment activities are designed to identify structural defects in the WCTS that have caused or significantly

contributed to previous SSOs; and/or, that are likely to cause or significantly contribute to the future occurrence of SSOs. The Condition Assessment shall evaluate the condition of the WCTS through a series of investigative steps, including the following specific activities as set forth in Paragraphs 23-27 and Paragraph 29 herein and reflected in the process and guidelines in Appendix C:

a. System-wide inspection of Small Diameter Gravity Sewer Mains, Large Diameter Gravity Sewer Mains, and manholes;

b. Condition Assessment to determine those structural defects that warrant Remedial Measures Alternatives Analysis and possibly Remedial Measures versus those that can be addressed via monitoring or maintenance within the CMOM Program; and,

c. Remedial Measures Alternatives Analyses for verified structural defects whereby SAWS shall identify, select, and prioritize Condition Remedial Measures for implementation during the term of the Consent Decree in accordance with the requirements of this Subsection, Appendix C (Condition Assessment), and Section VII (Review and Approval).

23. SAWS shall conduct the system-wide inspection, Condition Assessment, and Remedial Measures Alternatives Analysis activities consistent with Appendix C. Pertinent details and schedules for these activities are set forth below in Paragraphs 24-27 and Paragraph 29.

24. Large Diameter Gravity Sewer Inspection. SAWS shall assess all Large Diameter Gravity Sewer Mains over a period not exceeding four (4) years after the Date of Lodging. According to SAWS records, these assets include approximately 350 miles of Gravity Sewer Mains. Large Diameter Gravity Sewer Mains that have been inspected since inception of SAWS Large Diameter Sewer Program in 2005 shall be credited towards SAWS compliance obligations

for Large Diameter Gravity Sewer Mains inspection. SAWS may use CCTV, sonar, 360-degree video, laser imagining, other methods normally utilized by other sewer management agencies, physical inspection or appropriate new technologies to perform Large Diameter Gravity Sewer Main inspections.

25. Small Diameter Gravity Sewer Main Inspection. SAWS shall conduct a comprehensive inspection of its Small Diameter Gravity Sewer Mains. Inspection methods and timeframes shall be consistent with the requirements of Paragraph 26.

26. Sewer Inspection Methods and Requirements.

a. CCTV Inspection.

i. Over a period not exceeding four (4) years after the Date of Lodging, SAWS shall use CCTV to inspect all Small Diameter Gravity Sewer Mains located within the EARZ, all Small Diameter Gravity Sewer Mains that are made of clay installed prior to 1973 that have not been slip lined, CIPP lined, replaced, or pipe-burst, and all Small Diameter Gravity Sewer Mains made of concrete that have not been slip lined, CIPP lined, replaced or pipe-burst. According to SAWS records, these assets include approximately 1870 miles of Small Diameter Gravity Sewer Mains.

ii. Past CCTV inspections of Small Diameter Gravity Sewer Mains in the asset classes set forth in Subparagraph 26.a.i. performed by SAWS since January 1, 2009, shall be counted toward compliance with Subparagraph 26.a.i.

iii. When prioritizing Small Diameter Gravity Sewer Mains to CCTV, SAWS shall select portions of the WCTS based upon factors including, but not

limited to: pipe age and materials, analysis of past SSO frequency and volumes, proximity of sewer pipes to surface waters, or other appropriate factors. CCTV inspections shall be performed consistent with NASSCO Pipeline Assessment and Certification Program standards as a general guideline to be utilized by SAWS consistent with Appendix C.

b. Pole Camera Inspections.

i. Over a period not exceeding four (4) years after the Date of Lodging, SAWS shall use Pole Camera Inspections to assess all Small Diameter Gravity Sewer Mains that are clay pipe installed after 1972 and prior to 1983. According to SAWS records, these assets include approximately 435 miles of Small Diameter Gravity Sewer Mains.

ii. Past Pole Camera and CCTV inspections of Small Diameter Gravity Sewer Mains in the asset classes set forth in Subparagraph 26.b.i. performed by SAWS since January 1, 2009, shall be counted toward compliance with Subparagraph 26.b.i.

iii. When prioritizing Small Diameter Gravity Sewer Mains to inspect with Pole Cameras, SAWS shall select portions of the WCTS based upon factors including, but not limited to, pipe age and materials, analysis of past SSO frequency and volumes, proximity of sewer pipes to surface waters, or other factors. Where Pole Camera inspections reveal the possible presence of Gravity Sewer Main structural defects that have caused or significantly contributed to previous SSOs; and/or, that are likely to cause or significantly contribute to the future occurrence of SSOs,

SAWS shall perform CCTV inspections as appropriate to determine the nature and severity of the sewer defects. SAWS shall then conduct any necessary Condition Assessment and/or Remedial Measures Alternatives Analysis activities consistent with Subsection V(C) and Appendix C as applicable.

c. Visual Inspections. Over a period not exceeding ten (10) years after the Date of Lodging, SAWS shall inspect the remainder of the Small Diameter Gravity Sewer Mains in the WCTS using Visual Inspection techniques. SAWS shall determine the appropriate inspection methodology using criteria such as pipe age and materials, past SSO history, proximity to surface waters, and other appropriate factors. Visual Inspections may be conducted using one or more of the following techniques:

1. Smoke Testing;
2. Mechanical Proofing;
3. Sewer Cleaning Findings; and
4. Dye testing.

Where the above techniques reveal the possible presence of Gravity Sewer Main structural defects that have caused or significantly contributed to previous SSOs; and/or, that are likely to cause or significantly contribute to the future occurrence of SSOs, SAWS shall perform Pole Camera inspections and/or CCTV inspections as appropriate to determine the nature and severity of the sewer defects. SAWS shall then conduct any necessary Condition Assessment and/or Remedial Measures

Alternatives Analysis activities consistent with Subsection V(C) and Appendix C as applicable.

27. Manhole Inspections. SAWS shall inspect all of its manholes over a period not exceeding ten (10) years after the Date of Lodging as part of its Cleaning Program consistent with the required schedule therein, using appropriate methods, including primarily visual inspection. Any manhole inspections conducted by SAWS since January 1, 2009, shall count towards SAWS compliance with this paragraph.

28. Condition Assessment Report. Within four (4) and a half (1/2) years of the Date of Lodging, SAWS shall submit to EPA for review and comment a Condition Assessment Report that describes the Condition Assessment activities for inspections completed pursuant to Paragraphs 23 through 27 as of four (4) years after the Date of Lodging to meet the requirements of this Subsection. Consistent with Appendix C, the Condition Assessment Report shall summarize the Condition Assessment activities completed within four (4) years of the Date of Lodging and shall summarize the pipe mileage and number of manholes that will be included in the Condition Remedial Measures Alternatives Analysis and those that will be included in ongoing monitoring or maintenance within the CMOM Program. Condition Assessment activities completed within four (4) years of the Date of Lodging shall be summarized in the Condition Assessment Report; and, Condition Assessment activities that occur after four (4) years after the Date of Lodging shall be summarized in the Annual Report for the year in which the Condition Assessment activities were completed. The Condition Assessment Report shall adhere to the format and content of the Condition Assessment Report Template provided in Appendix G. The Condition Assessment Report shall be submitted to EPA for review and comment in accordance with Section VII (Review and Approval).

29. Condition Remedial Measures Alternatives Analysis. Following submittal of the Condition Assessment Report, SAWS shall complete a Remedial Measures Alternatives Analysis for those assets that were identified in the Condition Assessment Report as warranted to move to Remedial Measures Alternatives Analysis. SAWS shall perform an alternatives analysis for Pipe Segments and/or manholes to select appropriate Remedial Measures or other action, consistent with Appendix C. SAWS shall determine the most practical solution and timeframe for resolving structural defects considering both the long-term performance of the Pipe Segment/manhole and the life-cycle cost for maintaining the Pipe Segment/manhole in permanent service. The range of solutions and techniques shall be consistent with Appendix C.

30. Condition Remedial Measures Plan. Within twelve (12) months of submitting the Condition Assessment Report, SAWS shall provide to EPA for review and approval a Condition Remedial Measures Plan that summarizes SAWS recommended Condition Remedial Measures that were prioritized and selected in accordance with Appendix C to address verified structural defects in the WCTS that have caused or significantly contributed to previous SSOs; and/or, that are likely to cause or significantly contribute to the future occurrence of SSOs. SAWS prioritization and selection of Condition Remedial Measures shall be based on appropriate factors such as the severity of defects identified, frequency and history of SSOs, pipe size, age and material, appropriate grouping of WCTS assets for bid packages, scheduling practicalities and other appropriate factors. The Condition Remedial Measures Plan shall describe SAWS plans to implement the selected Condition Remedial Measures on a balanced annual basis during the term of the Decree, taking into account practical planning considerations such as permitting requirements, easement acquisition, contractor capacity, preparation of public bidding documents, the bidding and awards process for public contracts and required decision making

procedures for public bid contracts. The Condition Remedial Measures Plan shall adhere to the format and content of the Condition Remedial Measures Plan Template provided in Appendix G. The Condition Remedial Measures Plan shall be provided to EPA for review and approval in accordance with Section VII (Review and Approval).

31. Condition Remedial Measures Implementation. In general, SAWS shall plan and implement the approved Condition Remedial Measures Plan in accordance with the guidelines and procedures identified in Appendix C. SAWS shall begin implementation of the Condition Remedial Measures Plan on a balanced annual basis following receipt of EPA's written approval. SAWS shall complete all approved Small Diameter and Large Diameter Gravity Sewer Main Condition Remedial Measures within four (4) and a half (1/2) years of receipt of EPA's written approval of the Condition Remedial Measures Plan. Should a specific Large Diameter Condition Remedial Measures project require SAWS to obtain new easements and/or acquire land for more than twenty-five (25) percent of the length of that project or more than 2,500 feet, whichever is less, SAWS may at its option elect to complete that Large Diameter Condition Remedial Measures project within up to six (6) and a half (1/2) years of receipt of EPA's written approval of the Condition Remedial Measures Plan. SAWS shall advise EPA in the Condition Remedial Measures Plan of any specific Large Diameter Condition Remedial Measures projects that SAWS wishes to complete in a maximum of six (6) and a half (1/2) years instead of four (4) and a half (1/2) years. For those projects that SAWS wishes to complete within six (6) and a half (1/2) years, SAWS shall explain in the Condition Remedial Measures Plan the reasons why the need for new easements or land acquisition could not be avoided. Any modifications to the approved Condition Assessment Remedial Measures Plan shall be made in accordance with Section XVIII (Modification).