2. For purposes of this Consent Decree, the City agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), and Miss. Code Ann. § 49-17-29 and § 49-17-43.

III. APPLICABILITY

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

4. No transfer of ownership or operation of any portion of the Sewer System, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of the Decree are implemented. At least thirty (30) Days prior to such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States and MDEQ, in accordance with Section [REF _Ref322450400 \r \h * MERGEFORMAT] (Notices). Any attempt to transfer ownership or operation of the Sewer System without complying with this Paragraph constitutes a violation of this Decree.

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

6. In any action to enforce this Consent Decree, the City 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.

IV. OBJECTIVES

7. All plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing the City to achieve and maintain full compliance with the CWA and the MAWPCL, including the goal of eliminating all Sanitary Sewer Overflows.

V. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA (including, without limitation, those terms defined in Section 502 of the CWA, 33 U.S.C § 1362, and at 40 C.F.R. § 122.2) shall have the meanings assigned to

them in the CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Building Backup" shall mean a wastewater release or backup into a building that is caused by blockages, flow conditions, or other malfunctions in the Wastewater Collection and Transmission System. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a portion of a Private Lateral located on private property outside of the City's right-of-way or easement is not a Building Backup.

b. "Calendar Quarter" shall mean the three (3)-month periods ending on March 31, June 30, September 30, and December 31.

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

d. "Certification" or "certify" when used in this Consent Decree shall require the City to comply with Paragraph [REF _Ref387046011 \w \h] of this Consent Decree.

e. "The City" or "Defendant" shall mean the City of Hattiesburg, Mississippi, a municipal corporation, including all of its departments, agencies, instrumentalities such as the Water and Sewer Department, and any successor thereto.

f. "CMOM" or "Capacity, Management, Operations, and Maintenance" shall mean a program of accepted industry practices to properly manage, operate and maintain sanitary wastewater collection, transmission and treatment systems, investigate capacity-constrained areas of these systems, and respond to SSO events.

g. "Complaint" shall mean the complaint filed by the United States and the State in this action.

h. "COMSWIP" shall mean the City's Comprehensive Sewer and Water Improvements Project.

i. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section [REF _Ref322450534 \r \h * MERGEFORMAT]). In the event of a conflict between this document and any appendix, this document shall control.

j. "CWA" shall mean the Clean Water Act, as amended, 33 U.S.C. §§ 1251, *et seq.*

k. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Southern District of Mississippi.

l. "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.

m. "Deliverable" shall mean any written document required to be prepared and/or submitted by or on behalf of the City pursuant to this Consent Decree.

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

o. "Effective Date" shall have the definition provided in Section [REF _Ref322450432 \r \h * MERGEFORMAT].

p. "Excessive Infiltration/Inflow" or "Excessive I/I" shall have the meaning provided in 40 C.F.R. § 35.2005(b)(16).

q. "Force Main" shall mean any pipe which is owned or operated by the City 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 Line" or "Gravity Sewer" shall mean any pipe which is owned and operated by the City that receives, contains and conveys wastewater not normally under pressure, but is 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.

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 waters, surface runoff, street wash waters, or drainage.

u. "I/I" shall mean the total quantity of water from Infiltration, Inflow, and rainfall dependent Infiltration and Inflow without distinguishing the source.

v. "MAWPCL" shall mean the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq.*

w. "Major Gravity Line" shall mean any of the following:

(1) all Gravity Sewer Lines that are twelve (12) inches in diameter or larger;

(2) all Gravity Sewer Lines that convey wastewater from one pumping station service area to another pumping station service area; and

(3) all Gravity Sewer Lines that have caused or contributed, or that the City knows will likely cause or contribute to capacity-related SSOs.

x. "Month" shall mean one (1) calendar month running from the numbered day to the same numbered day of the following calendar month, regardless of whether the particular month has 28, 29, 30 or 31 days. In the event a triggered event would occur on a day of the month which does not exist (for example, on February 30), then the event shall be due on the first day of the following month (for example, March 1).

y. "MDEQ" shall mean the Mississippi Department of Environmental Quality and the Mississippi Commission on Environmental Quality, collectively, and any successor departments or agencies of the State.

z. "NPDES" shall mean the National Pollutant Discharge Elimination System authorized under Section 402 of the CWA, 33 U.S.C. § 1342.

aa. "NPDES Permits" shall mean NPDES permit No. MS0020303 issued to the City pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the South Lagoon, and NPDES permit No. MS0020826 issued to the City pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the North Lagoon, and any future extended, modified, or reissued permits.

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

cc. "Parties" shall mean the United States of America on behalf of the EPA, the State acting through MDEQ, and the City.

dd. "Plaintiffs" shall mean the United States of America on behalf of the EPA, and the State acting through MDEQ.

ee. "Private Lateral" shall mean that portion of a sanitary sewer conveyance pipe that extends from the wastewater main to the single-family, multi-family, apartment, or other dwelling unit or commercial or industrial structure to which wastewater service is or has been provided.

ff. "Prohibited Bypass" shall mean the intentional diversion of waste streams from any portion of a treatment facility which is prohibited pursuant to the terms set forth

at 40 C.F.R. § 122.41(m).

gg. "Public Document Repository" or "PDR" shall mean the Office of the City Clerk located at Hattiesburg City Hall, 200 Forrest Street, Hattiesburg, Mississippi, 39401 and the City's website, www.hattiesburgms.com.

hh. "Pump Station" shall mean facilities which are owned or operated by the City 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 pump station.

ii. "Sanitary Sewer Overflow" or "SSO" shall mean any discharge of wastewater to waters of the United States or the State from the City's Sewer System through a point source not specified in any NPDES permit, as well as any overflow, spill, or release of wastewater to public or private property from the Sewer System that may not have reached waters of the United States or the State, including all Building Backups.

jj. "SCADA" shall mean supervisory control and data acquisition.

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

ll. "Sewershed" shall mean the subdivisions of the City's WCTS containing sewers that are primarily hydraulically linked.

mm. "Sewer System" shall mean the WCTS and the WWTPs.

nn. "State" shall mean the State of Mississippi, including all of its departments, agencies, and instrumentalities.

oo. "Timely" when applied to the submittal of a Deliverable shall mean submitted no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and containing all of the elements pertaining to the submittal as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree). "Timely" when applied to the implementation of any Work shall mean implemented no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and in accordance with the elements pertaining to such Work as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree).

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

qq. "Wastewater Collection and Transmission System" or "WCTS" shall mean the municipal wastewater collection, retention and transmission system, including

all pipes, Force Mains, Gravity Sewer Lines, Pump Stations, pumps, manholes, and appurtenances thereto, which are owned or operated by the City.

rr. "Wastewater Treatment Plants" or "WWTPs" 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 include all facilities owned, managed, operated, and maintained by the City, including but not limited to the South Lagoon and the North Lagoon, and all components of such sewage treatment plants.

ss. "Work" shall mean all activities the City is required to perform under this Consent Decree.

VI. REVIEW OF DELIVERABLES/CERTIFICATION OF DELIVERABLES

9. Public Document Repository/ Public Review Requirement. The City shall post on its website instructions for how the public can request email notices of future Deliverables. Prior to the submission of each Deliverable to the EPA and MDEQ, the City shall post a copy of the Deliverable in its PDR and provide notice of such action by email to all parties who have requested such notice. The City shall also send to the PDR, prior to the submission of each Deliverable to the EPA and MDEQ, a memorandum containing a brief synopsis of the Deliverable and instructions on how to find the Deliverable on the City's website. The City shall post on its website instructions for submitting comments, and shall allow the public a period of thirty (30) Days to comment on, the following Deliverables: (i) the Priority Areas Evaluation Report/Rehabilitation Plan required under Paragraph 21; (ii) the Sewer Overflow Response Plan required under Paragraph 23.a.; (iii) the Emergency Response Plan required under Paragraph 23.b.; the Fats, Oils and Grease Control Program required under Paragraph 23.h.; and the Capacity Assurance Program required under Paragraph 23.i. After the thirty (30)-Day comment period, the City shall consider public comments for a period of at least fifteen (15) Days before submitting the Deliverable to the EPA and MDEQ. Within seven (7) Days after submitting a Deliverable to the EPA and MDEQ, the City shall place a copy of the submitted version of the Deliverable in its PDR. Within seven (7) Days after the EPA's approval, approval contingent upon conditions, or modification by the EPA, the City shall place a copy of such final version of the Deliverable in its PDR. The City shall maintain in its PDR until termination of this Consent Decree all written comments received from the EPA and MDEQ along with all submitted versions of Deliverables.

10. Copy to MDEQ. The City shall provide a copy of any Deliverable to MDEQ at the same time such Deliverable is due to the EPA.

11. EPA Action on Deliverables. After review of any Deliverable that is required to be submitted pursuant to this Consent Decree, the EPA, after consultation with MDEQ, shall in writing:

a. approve the submission;

b. approve the submission upon specified conditions;

c. approve part of the submission and disapprove the remainder; or

d. disapprove the submission.

12. Approved Deliverables. If a Deliverable is approved by the EPA pursuant to Paragraph [REF _Ref383526396 \r \h * MERGEFORMAT], the City shall take all actions required by the Deliverable in accordance with the schedules and requirements of the Deliverable as approved. If the Deliverable is conditionally approved or approved only in part, pursuant to Paragraph [REF _Ref383526325 \r \h * MERGEFORMAT] or [REF _Ref383524967 \r \h * MERGEFORMAT], the City shall, upon written direction from the EPA, after consultation with MDEQ, take all actions required by the approved plan, report, or other item that the EPA, after consultation with MDEQ, determines are technically severable from any disapproved portions, subject to the City's right to dispute only the specified conditions or the disapproved portions, under Section [REF _Ref442169774 \w \h] of this Consent Decree (Dispute Resolution). Following the EPA approval of any Deliverable or portion thereof, such Deliverable or portion thereof so approved shall be incorporated into and become enforceable under this Consent Decree.

13. Disapproved Deliverables. If the submission is disapproved in whole or in part pursuant to Paragraph [REF _Ref383524967 \r \h * MERGEFORMAT] or [REF _Ref383524994 \r \h * MERGEFORMAT], the City shall, within thirty (30) Days or such other time as the EPA and the City agree to in writing, correct all deficiencies and resubmit to the EPA the Deliverable, or disapproved portion thereof, for approval, in accordance with Paragraphs [REF _Ref383525115 \r \h * MERGEFORMAT] and [REF _Ref383525135 \r \h * MERGEFORMAT]. If the resubmission is approved in whole or in part, the City shall proceed in accordance with Paragraph [REF _Ref383525135 \r \h * MERGEFORMAT].

14. Stipulated Penalties Accruing. Any stipulated penalties applicable to the original Deliverable, as provided in Section [REF _Ref442169823 \w \h] of this Decree, shall accrue during the thirty (30)-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the City's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

15. Resubmitted Deliverable. If a resubmitted Deliverable, or portion thereof, is disapproved in whole or in part, the EPA, after consultation with MDEQ, may again require the City to correct any deficiencies, in accordance with preceding Paragraph [REF _Ref383526531 \r \h * MERGEFORMAT], or may itself correct any deficiencies, subject to the City's right to invoke Dispute Resolution and the right of the EPA to seek stipulated penalties as provided in

preceding Paragraph [REF _Ref383526273 \r \h * MERGEFORMAT]. Upon the EPA's correction of any deficiencies, such resubmitted plan, report, or other item, or portion thereof will be incorporated into and become enforceable under this Consent Decree and shall be implemented by the City according to the approved schedule, subject to the City's right to invoke Dispute Resolution pursuant to Section [REF _Ref383525264 \r \h * MERGEFORMAT].

16. Timing of Review of Deliverables. If the EPA issues written comments and decisions on any Deliverable more than ninety (90) Days after receipt of such submission, any subsequent deadline or milestone that is dependent upon such comments or decisions shall be extended. The length of the extension shall be determined by calculating the number of Days between the EPA's receipt of the submission and the date of the EPA's written response, less ninety (90) Days. Within thirty (30) Days of the date that the City knows or should know of a deadline or milestone that the City believes is extended under this Paragraph, the City shall inform the EPA, in writing, of its belief and the amount of time the City believes the deadlines or milestones are extended. If the EPA disagrees with the City's determination that a deadline is dependent upon such comments or decisions, the EPA shall inform the City in writing. The City may dispute the EPA's conclusion regarding whether a deadline is dependent upon such comments or decisions pursuant to Section [REF _Ref387667850 \w \h] of this Consent Decree (Dispute Resolution).

17. Certification. In all Deliverables, notices, documents or reports submitted to the United States and State pursuant to this Consent Decree, the City shall, by a senior City management official, sign and certify such notices, documents and reports as follows:

> *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

VII. COMPLIANCE REQUIREMENTS

18. Obligation to Perform Work. No later than the Effective Date, the City shall begin to implement the Work pursuant to this Consent Decree. All Work identified in this Section [REF _Ref442169872 \w \h] shall be completed no later than one hundred ninety-six (196) Months after the Effective Date. All Work shall be performed using sound engineering practices to ensure that construction, management, operation and maintenance of the Sewer System complies with the CWA, including practices to improve the resilience of the Sewer System to the impacts of climate change. Sound engineering practices may include, but are not limited to, appropriate provisions of the *Handbook: Sewer System Infrastructure Analysis and*

Rehabilitation, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 2009~~10~~; EPA's guidance: *Computer Tools for Sanitary Sewer System Capacity Analysis and Planning*, EPA/600/R-07/111, October 2007; the most current edition of MDEQ's *Guidance for the Design of Publicly Owned Wastewater Facilities*; EPA's ~~*Climate Ready Creating Resilient*~~ *Water Utilities (CRWU) Initiative*, found at https://www.epa.gov/crwu ~~referenced at EPA 817-F-12-005, 2012~~; and EPA's *Climate Resilience Evaluation and Awareness Tool Version 3.0* (CREAT 3.0), referenced at EPA 815-B-16-004, May 2016 and currently at [HYPERLINK "https://www.epa.gov/crwu/build-climate-resilience-your-utility"]; and the Pump Stations evaluations shall be consistent with the *Pumping Systems* chapter of the most current version of Water Environment Federation's *Manual of Practice FD-4, Design of Wastewater and Stormwater Pumping Stations.*

19. Early Action Projects. Based on previous investigations conducted pursuant to the City's COMSWIP, the City has identified certain rehabilitation and other projects that are intended to address conditions currently causing SSOs in the WCTS and other violations alleged in the Complaint which shall be referred to as "Early Action Projects." The Early Action Projects are set forth and described on Appendix B, attached hereto and incorporated herein. The City represents that the Early Action Projects will constitute approximately three percent (3%) of the WCTS by linear foot, will contribute to the improvement of 15 SSOs, and are estimated to cost approximately $5.2 million. The City shall complete each of these Early Action Projects in accordance with the deadlines set forth in Appendix B which do not extend past December 31, 2020. Any change to this list of projects or deadlines approved by the EPA shall not constitute a material modification to this Consent Decree as set forth in Section [REF _Ref386810247 \w \h * MERGEFORMAT] (Modifications) below.

20. Sanitary Sewer Evaluation/Rehabilitation ("SSER") Work Plan. Within nine (9) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a SSER Work Plan that provides for the continual assessment, analysis, and rehabilitation of the WCTS infrastructure to, among other things, address I/I, structural defects, and the other conditions causing, or that are likely to cause, SSOs. The SSER Work Plan shall establish procedures for setting priorities and expeditious schedules for undertaking the WCTS assessment and rehabilitation components set forth in Paragraphs [REF _Ref387045135 \w \h * MERGEFORMAT] through [REF _Ref387045172 \w \h * MERGEFORMAT], below. The City shall develop these priorities and expeditious schedules taking into consideration the nature and extent of customer complaints; flow monitoring, including flow isolation studies; location and cause of SSOs; any remedial measures already undertaken; field crew work orders; any preliminary sewer assessments; locations closer to the Leaf and Bouie Rivers; and any other relevant information. In addition, areas near surface waters that have been included on MDEQ's CWA Section 303(d) list of impaired waters for pathogens shall also receive priority by the City. Finally, the City shall also consider areas that have been identified by the EPA as potentially having environmental justice issues (minority and/or low income neighborhoods) when developing the priorities. The SSER Work Plan shall also include performance goals for each of the components of the SSER Work Plan set forth below, and procedures for analysis of the

effectiveness of completed rehabilitation. The SSER Work Plan shall include the following components:

a. Corrosion Defect Identification. The Corrosion Defect Identification component of the SSER Work Plan shall establish standard procedures for inspecting and identifying WCTS infrastructure that is either corroded or at risk of corrosion. The Corrosion Defect Identification component shall include a system for prioritizing repair of existing corrosion defects, corrosion identification forms, and procedures for a corrosion defect analysis.

b. Manhole Condition Assessment and Rehabilitation. The Manhole Condition Assessment and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the condition assessment of manholes within the WCTS. This component shall include manhole inspection forms and procedures for a manhole defect analysis. This component shall also establish a process for setting manhole rehabilitation priorities and expeditious schedules; shall establish an ongoing inventory of manhole rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

c. Flow Monitoring. The Flow Monitoring component of the SSER Work Plan shall establish procedures for initiating routine flow monitoring during dry and wet weather to support engineering analyses related to Sewer System capacity and peak flow studies. Dry weather monitoring shall be carried out so as to allow the characterization of base flows and I/I rates within the WCTS. Wet weather monitoring shall be conducted periodically during events of sufficient duration and intensity that cause significant I/I into the WCTS. The procedures shall identify the process used to establish flow monitoring locations, appropriate flow monitoring techniques, sewer cleaning associated with flow monitoring and a procedure for rainfall measurement.

d. Capacity Assessment. The Capacity Assessment component of the SSER Work Plan shall establish procedures and methodologies for assessing the wet weather capacity of the WCTS. This assessment shall include engineering analyses of the WCTS capacity derived from, but not limited to, flow monitoring data, remote monitoring equipment installed in the WCTS to monitor sewer pipe surcharge, and hydraulic modeling results where applicable. This assessment shall identify those portions of the WCTS that are expected to cause or contribute to SSOs under existing and projected average and peak flows in dry and wet weather, and the degree to which those portions of the WCTS experience or cause SSOs under current or projected future conditions.

e. Closed Circuit Television ("CCTV") Inspection. The CCTV inspection component of the SSER Work Plan shall establish standard procedures for CCTV inspection within the WCTS to support sewer assessment and rehabilitation activities, and shall include procedures for CCTV cleaning and a process for the retention and

retrieval of CCTV inspection data.

f. Gravity Sewer Line Defect Analysis and Rehabilitation. The Gravity Sewer Line Defect Analysis component of the SSER Work Plan shall establish standard procedures for analysis of Gravity Sewer Line defects within the WCTS which may vary depending on the size of the pipe. Such procedures shall include Private Lateral investigations to identify sources of I/I to the WCTS. The Gravity Sewer Line Defect Analysis component shall establish standard defect codes, defect identification procedures and guidelines, and a standardized process for cataloging Gravity Sewer Line defects. This component shall also establish a process for setting Gravity Sewer Line rehabilitation priorities; shall establish an ongoing inventory of Gravity Sewer Line rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

g. Smoke Testing. The Smoke Testing component of the SSER Work Plan shall establish standard procedures for smoke testing of the Gravity Sewer Lines within the WCTS to identify sources of I/I, including cross connections and other unauthorized connections. Such procedures shall include Private Lateral investigations to identify sources of I/I.

h. Force Main Condition Assessment and Rehabilitation. The Force Main Condition Assessment and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the condition assessment of Force Mains within the WCTS. This component shall include inspection forms and procedures for a Force Main defect analysis. This component shall also establish a process for setting Force Main rehabilitation priorities; shall establish an ongoing inventory of Force Main rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

i. Pump Station Performance and Rehabilitation. The Pump Station Performance and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the evaluation of Pump Station performance and Pump Station adequacy within the WCTS. The Pump Station Performance and Rehabilitation component shall include:

(1) The use of pump run time meters; pump start counters; computation of Nominal Average Pump Operating Time ("NAPOT"); root cause failure analysis protocols; and appropriate remote sensing such as SCADA;

(2) The evaluation of station capacity, as described in the *Pumping Systems* chapter of the most current version of WEF's Manual of Practice FD-4, *Design of Wastewater and Stormwater Pumping Stations*;

(3) The evaluation of critical response time, defined as the time interval between activation of the high wet well level alarm and the first (1st) SSO, under peak flow conditions;

(4) The evaluation of station conditions, based upon both physical inspection and recent operating and mechanical failure history during at least the past five (5) years;

(5) The evaluation of station design and equipment, including redundancy of pumps and electrical power supply, and other equipment installed, based upon Chapter 40, *Wastewater Pumping Stations* of the most recent edition of *Recommended Standards for Wastewater Facilities* by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (commonly known as the "Ten State Standards");

(6) The evaluation of the ability of maintenance personnel to take corrective action within the critical response time calculated for each Pump Station; and

(7) A process for setting Pump Station rehabilitation priorities and expeditious schedules and an ongoing inventory of Pump Station rehabilitation, including identification of the rehabilitation techniques to be used, and an analysis of the effectiveness of completed rehabilitation.

21. Priority Areas Evaluation Report/Rehabilitation Plan. For purposes of implementing the SSER Work Plan under this Consent Decree, the City has already prioritized certain Sewersheds within the WCTS into two (2) Priority Areas for sewer assessment and rehabilitation work pursuant to the SSER Work Plan under this Consent Decree. This prioritization was based on existing information including the location and frequency of past SSOs and the other criteria set forth in Paragraph 20 above. These two (2) "Priority Areas" are shown on the maps in Appendix C, attached hereto and incorporated herein. The Priority Areas represent approximately forty-three percent (43%) of the WCTS by linear foot. The City shall complete the assessment of Priority Area 1 pursuant to the SSER Work Plan on or before thirty-two (32) Months after the Effective Date. The City shall complete the assessment of Priority Area 2 pursuant to the SSER Work Plan on or before forty-five (45) Months after the Effective Date. Within three (3) Months after completion of the assessment of a Priority Area as set forth above pursuant to the SSER Work Plan, the City shall submit to the EPA for review and approval a Priority Area Evaluation Report/Rehabilitation Plan setting forth the results of the assessment for that Priority Area and proposed rehabilitative and corrective actions and schedules in order to meet objectives of this Consent Decree. Upon approval by the EPA, the City shall implement the remedial measures in the approved Rehabilitation Plan portion of this submittal in accordance with the schedule contained therein.

a. Priority Area Evaluation Report. The Priority Area Evaluation Report portion of this submittal shall include, at a minimum, the following:

(1) A thorough analysis of historical and current flow monitoring, inspection, rainfall and other data, including data collected during the evaluation of the Priority Area;

(2) Identification of areas with Excessive I/I, such that these conditions are causing and/or contributing to SSOs and/or Prohibited Bypasses at a WWTP;

(3) Identification of sources of I/I within the Priority Area, if identifiable, by manhole/line segment, street address, type (Infiltration or Inflow), source (e.g., "wall leakage"), and estimated flow from the source;

(4) Identification of cross-connections between the WCTS and the City's municipal separate storm sewer system;

(5) Identification and quantification of SSOs, including all potential SSOs identified pursuant to implementation of the SSER Work Plan;

(6) A summary of activities undertaken to configure the Hydraulic Model for the Priority Area and certification that the Hydraulic Model is capable of performing those functions identified in Paragraph [REF _Ref387045491 \w \h * MERGEFORMAT], below;

(7) A summary of activities undertaken to calibrate the Hydraulic Model and certification that the Hydraulic Model has been calibrated (including the performance of sensitivity analyses) and verified using actual system data (e.g., flow data) from permanent and temporary sewage flow monitoring points in the WCTS (this certification shall include a description of the methodology, data collected, and results of the Hydraulic Model calibrations and verifications);

(8) Identification of portions of the WCTS within the Priority Area in which physical degradation is causing or contributing to SSOs;

(9) Results of average and peak daily dry and wet weather flow measurements;

(10) A determination of maximum Infiltration rate during periods of

high ground water (in gpd/inch diameter-mile);

(11) A determination of maximum hourly Inflow rate during wet weather for various storm durations and intensities (in gpd/inch diameter-mile);

(12) A determination of peaking factors for the Priority Area (the ratio of measured peak flow to average dry weather flow as measured through the duration of the evaluation);

(13) A summary of flow monitoring activities, to include, at a minimum, a map showing the location and type of each flow meter, problems encountered and deviations from the SSER Work Plan, and a description of flow monitor calibration activities, including any scatter graphs and calibration and verification graphs;

(14) A summary of field investigative activities performed to include, at a minimum: type of activity; number of activities performed (e.g., "100 out of 500 manholes inspected"), observations made under each activity (inspection procedure), and summaries of the results;

(15) A summary of the structural defects identified in the WCTS in the Priority Area to include, at a minimum: number of each type of defect by line segment, manhole number or street address, and estimates of peak flow or impact on WCTS capacity (as appropriate) from defects in each line segment, based on a consistently applied set of stated criteria as set forth in the SSER Work Plan;

(16) A summary of the technical approach utilized in carrying out the capacity assessment analyses outlined in Paragraph [REF _Ref479061436 \w \h] above;

(17) A detailed description of any deviations from the capacity assessment outlined in Paragraph [REF _Ref479061436 \w \h] above, including a discussion of the reasons for such deviation;

(18) Identification of all portions of the WCTS within the Priority Area with insufficient capacity (pursuant to Paragraph [REF _Ref479061436 \w \h] above and as identified by the Hydraulic Model of a Major Gravity Line, Pump Station or other structure) to convey peak flows without experiencing surcharge sufficient to cause a SSO under either projected peak flows or projected average

conditions or both;

(19) A description of future projected flows;

(20) Information on the predicted (e.g. Manning equation) and actual peak flow capacity of all Major Gravity Lines (by segment), all Force Mains, siphons, and Pump Stations;

(21) Summaries of the number and footage of sewer segments surcharged, and the number of structures at which a SSO might be expected to occur under each condition investigated;

(22) Mapping for each condition investigated, illustrating each pipe segment operating in surcharge, and each manhole or structure at which a SSO might be expected to occur;

(23) Information regarding the Pump Station evaluation as required by Paragraph [REF _Ref387045172 \w \h * MERGEFORMAT] above;

(24) The results of the capacity assessment as required by Paragraph [REF _Ref479061436 \w \h] above; and

(25) A summary of any capital projects implemented since commencement of the SSER Work Plan.

b. Rehabilitation Plan. The Rehabilitation Plan portion of this submittal shall include, at a minimum, the following:

(1) Identification of specific measures and schedules that, when implemented, will result in adequate capacity in the WCTS within the Priority Area to collect, convey and treat anticipated peak flows, without SSOs or Prohibited Bypasses at a WWTP;

(2) Identification of the degree to which sources of Excessive I/I shall be removed, and the degree to which Excessive I/I removal is expected to alleviate capacity constraints, and propose specific remedial measures and schedules that will address those capacity limitations not expected to be addressed by Excessive I/I removal (anticipated I/I removal rates used in the development of the Rehabilitation Plan shall reflect current industry practice);

(3) Identification of specific remedial measures and schedules to address capacity limitations that may also include increases in Pump Station and sewer line capacity, construction of storage or

equalization basin facilities, or increases in WWTP capacity;

(4) Identification of all measures and schedules necessary to eliminate all cross-connections between the WCTS and the City's municipal separate storm sewer system;

(5) Identification of all measures and schedules necessary to eliminate all SSOs caused by physical degradation of sewers, inadequate Pump Station capacities, or inadequate Pump Station reliability;

(6) Prioritized schedules for remedial measures based upon likely relative human health and environmental impact risks, SSO frequencies, and SSO volumes;

(7) A description of the methodology used to apply the prioritization factors in Paragraph [REF _Ref387217846 \w \h * MERGEFORMAT] above;

(8) Estimated capital, operations and maintenance, and present value costs for each identified remedial measure in consistent, year-specific dollars;

(9) Identification of the dates for preliminary design, complete design, complete permitting, contract award, construction commencement, and construction completion dates for each measure proposed; and

(10) An expeditious schedule such that design, construction, and placement in service of all proposed measures shall be completed within one hundred fifty-six (156) Months after the Effective Date of this Consent Decree for Priority Area 1; and within one hundred ninety-two (192) Months after the Effective Date of this Consent Decree for Priority Area 2.

22. Priority Areas Rehabilitation Report. Within four (4) Months after completion of all remedial measures set forth in a Rehabilitation Plan for a particular Priority Area, the City shall submit to the EPA for review and approval a Rehabilitation Report summarizing the implementation of the Rehabilitation Plan. Such summary shall include, at a minimum, the following:

a. Identification of specific measures taken to achieve, and an analysis of whether such measures resulted in, adequate capacity in the WCTS within the Priority Area to collect and convey and treat anticipated peak flows, without SSOs or Prohibited Bypasses at a WWTP;

b. An analysis of the degree to which sources of Excessive I/I were removed,

and the degree to which Excessive I/I removal alleviated capacity constraints; and

c. Identification of all measures taken to eliminate, and an analysis of whether such measures resulted in the elimination of, all cross-connections and SSOs caused by physical degradation of sewers, inadequate Pump Station capacities, or inadequate Pump Station reliability.

23. Capacity, Management, Operations and Maintenance Programs. The City shall develop and implement the Capacity, Management, Operations and Maintenance ("CMOM") programs as provided below. All CMOM programs shall be developed in accordance with EPA Region 4 CMOM guidance, attached hereto and incorporated herein as Appendix D. The City shall ensure that each CMOM program has a written, defined purpose; a written, defined goal; is documented in writing with specific detail; is implemented by trained personnel; has established performance measures; and has written procedures for periodic review. The Parties recognize that the City may need or want to revise the CMOM Programs set forth below during the term of this Consent Decree. Such revisions shall not be considered modifications to the Consent Decree for purposes of Section [REF _Ref387059130 \w \h * MERGEFORMAT] (Modification). The City must obtain the EPA's prior written approval of any revision to the substance of any CMOM Program required by this Consent Decree and shall place copies of any such revised Program in the PDR in accordance with the provisions of Section [REF _Ref387059293 \w \h * MERGEFORMAT]. The City may make non-substantive changes to any CMOM Program required by this Consent Decree without the EPA's approval and shall provide a copy of any revised Program to the EPA and MDEQ, and place a copy of any such revised Program in the PDR within seven (7) Days after making such revision.

a. Sewer Overflow Response Plan ("SORP"). Within three (3) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a SORP that will establish timely and effective methods and means of responding to, cleaning up, and/or minimizing the impact of SSOs; timely reporting of the location, volume, cause, impact, and other pertinent SSO information to the appropriate regulatory agencies; and timely and effective notification of SSOs to potentially impacted public. At minimum, the SORP shall include and provide for the following:

(1) Within twenty-four (24) hours of the time the City first becomes aware of a SSO to waters of the United States or the State or of a SSO that will endanger public health or the environment, the City shall provide in an oral report to MDEQ the location of the SSO by street address or any other appropriate method (e.g., latitude-longitude). The oral report shall be given to MDEQ through calling (601) 961-5682.

(2) Within five (5) days of the time the City first becomes aware of a SSO to waters of the United States or the State or of a SSO that

will endanger public health or the environment, the City shall also provide a written report to MDEQ for the SSO. The City shall maintain a copy of any written reports prepared pursuant to this Paragraph for a period of not less than five (5) years from the date of the SSO. The written report shall contain the following:

(a) The location of the SSO by street address, or any other appropriate method (e.g., latitude-longitude);

(b) The estimated date and time when the SSO began and stopped, or if it is still an active SSO, the anticipated time to stop the SSO;

(c) The steps taken to respond to the SSO;

(d) The name of the receiving water, if applicable;

(e) An estimate of the volume (in gallons) of sewage spilled;

(f) A description of the WCTS component from which the SSO was released (such as manhole, crack in pipe, Pump Station wet well or constructed overflow pipe);

(g) Subject to available information, an estimate of the SSO's impact on public health and to water quality in the receiving water body;

(h) The cause or suspected cause of the SSO;

(i) The date of the last SSO at the same point;

(j) The steps taken or to be taken to reduce, prevent, or eliminate, reoccurrence of the SSO;

(k) A list of all notifications to the public and other agencies or departments; and

(l) The steps taken or to be taken to clean up any surfaces that have been in contact and/or contaminated by the SSO.

(3) Procedures for documenting and reporting SSOs based on demonstrable evidence that a SSO occurred regardless of whether City personnel directly witnessed the SSO occurring.

(4) The City shall maintain for all SSOs for a period of not less than five (5) years from the date of the SSO all records documenting the steps that have been and will be taken to prevent the SSO from recurring, including work order records associated with investigation and repair activities related to the SSO. The City shall also maintain for a period of not less than five (5) years from the date of the SSO a list and description of complaints from customers or others regarding the SSO.

(5) The SORP shall provide procedures for responding to all SSOs to minimize the environmental impact and potential human health risk of SSOs. At a minimum, such response procedures shall include:

(a) A detailed description of the actions the City will undertake to immediately provide notice to the public when appropriate (through the local news media or other means including signs or barricades to restrict access) of a SSO;

(b) A detailed description of the actions the City will undertake to provide notice to appropriate federal, state or local agencies/authorities;

(c) A detailed plan (including the development of response standard operating procedures) to minimize the volume of untreated wastewater transmitted to the portion of the WCTS impacted by the events precipitating the SSO to minimize overflow volumes;

(d) A particular description of the City's response to Building Backups, including the timeframe for responses and the measures to be taken to clean up Building Backups found to be caused by conditions in the City's Sewer System, including procedures necessary to disinfect and/or remove items potentially contaminated by Building Backups such as 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 and other appropriate measures to disinfect and/or remove items potentially contaminated by Building Backups; and a description of the City's follow-up process to ensure adequacy of cleanup;

(e) A detailed plan of the resources to be used to correct or repair the condition causing or contributing to the SSO;

(f) A detailed plan to ensure the preparedness, including response training of City employees and personnel of other affected agencies, necessary for the effective implementation of the SORP in the event of a SSO and establishing procedures and providing adequate training to response personnel for estimating SSO volumes;

(g) A list of those SSO locations within the area of the WCTS served by each Pump Station that have been recorded as overflowing more than once within the previous twelve (12) month period and/or those locations at which a SSO is likely to occur first in the event of a Pump Station failure; and

(h) Pump Station emergency bypass/pump-around strategies, and procedures.

b. Emergency Response Plan. Within three (3) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval an Emergency Response Plan. The Plan shall address both routine and catastrophic emergencies. Routine emergencies include such situations as overflowing manholes, line breaks, localized electrical failure and Pump Station outages. Catastrophic emergencies include floods, tornados, earthquakes or other natural events, serious chemical spills and widespread electrical failure. The Plan shall address areas of vulnerability and determine the effect of such a failure to operations, equipment and public safety and health based upon such factors as topography, weather, sewer system size, and other site specific factors. The Plan shall include standard forms. The Plan shall have the following components:

(1) The WWTP component of the Emergency Response Plan shall establish standard operating procedures for use in emergency situations, including changes in process controls.

(2) The WCTS component of the Emergency Response Plan shall establish standard operating procedures for use in emergency operations, including identification of the actions staff should take in the event of emergency situations (specific to the type of emergency that could occur); criteria for initiating and ceasing emergency operations; identification of appropriate repair equipment and sources thereof; and instructions on how to operate equipment and systems during an emergency when they are not functioning as intended but are not fully inoperable.

(3) In addition to the reporting requirements set forth in Section [REF _Ref386811409 \w \h * MERGEFORMAT] (Reporting

Requirements), the City shall establish, in coordination with Public Health Authorities:

(a) Criteria to be used as the basis for immediately notifying the public and other impacted entities, such as users with a downstream water intake, of an emergency situation caused by a SSO, Prohibited Bypass, or effluent limit violation;

(b) A list identifying, by name, phone number and pager number, all the City staff who are responsible for notifying the public;

(c) A list identifying, by name and phone number, all Public Contacts, including local media outlets, who must be contacted during an emergency situation;

(d) A list identifying the City staff who are authorized to make public statements during emergency situations; and

(e) Pre-scripted news releases for various types of emergency situations.

(4) In addition to the notification requirements set forth in the NPDES Permits, and the reporting requirements set forth in Section [REF _Ref386811440 \w \h * MERGEFORMAT] (Reporting Requirements), the City shall establish, in coordination with Public Health Authorities:

(a) Criteria to be used as the basis for immediately notifying regulatory authorities, MDEQ, the City and the Public Health Authorities of any emergency situation caused by a SSO, Prohibited Bypass, or effluent limit violation;

(b) A list identifying, by name, phone number and pager number, all the City staff who are responsible for notifying the regulatory authorities;

(c) A list identifying, by name and phone number, all officials who must be contacted; and

(d) Standard reporting forms.

c. Information Management System ("IMS") Program. Within forty-eight (48) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, an IMS Program, as more particularly described below. At

a minimum, the IMS Program shall include the following:

(1) A management IMS component to provide City managers with guidance and instruction to adequately evaluate operations, maintenance, customer service, and Sewer System rehabilitation activities so that overall Sewer System performance can be determined and utility planning can be conducted. This IMS component shall utilize management reports and standard management forms.

(2) An operations IMS component to provide City managers and field supervisors with guidance to adequately track scheduled operational activities and to enhance operational performance. This IMS component shall utilize operating reports and standard operation forms used by field personnel and shall provide for field supervisor review.

(3) A maintenance IMS component to provide City managers and field supervisors with guidance to adequately track scheduled maintenance activities and to enhance maintenance performance. This IMS component shall utilize maintenance reports and standard maintenance forms used by field personnel. The system shall provide for field supervisor review.

(4) A description of what information will be fed into the system, how it will be entered and by what means it will be recorded.

(5) A description of the management reports that will be generated from the input data (i.e., work reports), including examples and periodicity for review of such reports.

(6) A description of the work reports that will be prepared and submitted, including examples and periodicity for review of such reports.

(7) Standard forms that will be used by both field personnel and management for the Program, where applicable.

(8) A detailed description of how the records will be maintained.

(9) If computer software will be utilized, a description of the software to be used with cited references for software training and procedures for utilizing the software.

(10) Implementation of improvements to the City's current~~s~~ Geographic

Information Systems ("GIS") mapping system of its entire WCTS on or before twenty-eight (28) Months after the Effective Date of this Consent Decree. Specifically, the City shall implement improvements to its current GIS as follows:

(a) An updated GIS database to include all as-builts and Active As-built Supplemental Information System ("AAS IS") forms, including new and corrected asset attribute data;

(b) Streamlining of the GIS data entry process for new assets, including electronic as-built data and necessary standards so that all new assets are added to the GIS system within ninety (90) calendar days of their activation in the field. Included shall be the development of a system to interface with the City WCTS hydraulic computer model so that the information can be efficiently exported to the WCTS hydraulic computer model;

(c) Simplification of the AAS IS process to facilitate wider usage;

(d) Development of a "flagging process" for damage investigators to note GIS inaccuracies;

(e) Provision for additional GIS training and refresher training;

(f) Use of online access to GIS maps to facilitate more widespread access to GIS resources to remote staff; and

(g) Determination via suitable as-built drawings, or GPS or traditional surveying field measurements, elevations of all manhole rim elevations and sewer inverts at connections to manholes and Pump Stations and their inclusion into GIS.

(11) Development and implementation of performance indicators to provide City managers with guidance to adequately evaluate data collected in the IMS for use in determining the condition of the Sewer System and an evaluation of the City's CMOM programs. Performance indicators shall include, without limitation, the linear footage of Gravity Sewer Line and Force Main inspections, the linear footage of Gravity Sewers cleaned, the number of manholes inspected, the number of manholes cleaned/maintained, the number of inverted siphons inspected, the number of inverted siphons cleaned/maintained, the number of SSOs per mile of Gravity

Sewer, the number of SSOs per mile of Force Main, the number of SSOs per Pump Station, per capita wastewater flow, NPDES Permit effluent compliance and such other performance indicators as the City may suggest and the EPA approves.

(12) Maintenance activity tracked by type (corrective, preventative, and emergency).

d. Sewer System Hydraulic Model. The City shall develop and maintain a calibrated hydraulic model of its Sewer System ("the Model") to establish existing hydraulic conditions and plan for future capacity needs of the Sewer System. The Model shall be developed concurrent with the sewer assessment and rehabilitation schedule for the initial assessment of the Priority Areas within the WCTS in Paragraph [REF _Ref387217918 \w \h * MERGEFORMAT] above. The model development schedule will be established based on system attribute data collected as part of the Sewer Mapping Program described in Paragraph [REF _Ref387217960 \w \h * MERGEFORMAT] below and flow and rainfall data collected as part of the flow monitoring program described in Paragraph [REF _Ref387217984 \w \h * MERGEFORMAT] above.

(1) At a minimum, the Model shall be capable of:

(a) Accurately predicting the flow rate and hydraulic grade line of wastewater in Force Mains from Major Pump Stations and the Major Gravity Sewer Lines under any historical dry or wet weather condition;

(b) Accurately predicting the location and severity of SSOs from the WCTS under any historical dry or wet weather condition;

(c) Fully dynamic temporal analysis, including an accounting of downstream backwater impacts on upstream flows;

(d) Accurately predicting the impacts of changes to Pump Station capacities on upstream and downstream flow rates and hydraulic grade lines, including hydraulic losses which may result from either full or partial Pump Station failures; and

(e) Generating hydrographs depicting baseline wastewater flow and I/I for the Sewer System for various storm recurrence intervals. The Model shall include methods for accurately estimating the baseline wastewater flows and I/I components in each Sewershed using quality-controlled flow data obtained for the Sewer System.

(2) At a minimum, the City shall employ the Model to:

(a) Assist with the development and implementation of operation and maintenance procedures that optimize collection and transmission capacity;

(b) Evaluate the impacts which Infiltration/Inflow rehabilitation projects, proposed system modifications, and upgrades and expansions have on collection and transmission capacity and the performance of the City's Sewer System;

(c) Prioritize the continuing evaluation of the WCTS pursuant to the sewer assessment and rehabilitation in Paragraphs [REF _Ref387218022 \w \h * MERGEFORMAT] and [REF _Ref387217918 \w \h * MERGEFORMAT] above;

(d) Prioritize rehabilitation projects; and

(e) Implement the Capacity Assurance Program described in Paragraph [REF _Ref387218080 \w \h * MERGEFORMAT] below.

(3) The City shall develop and employ written procedures, protocols, and schedules to routinely perform:

(a) Calibrations of the Model to account for age-related and other changes to Sewer System hydraulics, and to obtain and manage updated data from physical field observations and measurements for this purpose;

(b) Verification of the Model's accuracy and performance; and

(c) Sensitivity analyses to determine how the Model responds to changes in input parameters and variables.

(4) Within eight (8) Months after the completion of the Mapping Program for each Priority Area and of the rest of the Sewer System as set forth in Paragraph [REF _Ref486234474 \w \h] below, the City shall submit a report ("Model Report") for each applicable area to the EPA which:

(a) Identifies the functional attributes, characteristics, and limitations specific to the Model's software as compared to other products evaluated by the City, and explains how the Model meets

the capabilities required in Paragraph [REF _Ref387218158 \w \h * MERGEFORMAT] above;

(b) Identifies the date that the Model was deemed to be calibrated and functional;

(c) Identifies all input and output parameters, constants, and assumed values used by the Model;

(d) Explains the bases for the input parameters used in each Sewershed to characterize baseline wastewater flows and I/I, the quality assurance procedures used in acquiring the input data, and the engineering bases for the selections of constants (e.g., friction factors) and assumed values; and

(e) Provides a brief description of each procedure and protocol developed pursuant to Paragraph [REF _Ref387218213 \w \h * MERGEFORMAT] above, provides the associated schedules, and identifies the individual(s) with their qualifications who are employed to implement the procedures and protocols.

(5) Following receipt of the Model Report, the EPA and MDEQ may conduct compliance audits of the capabilities of the Model, the implementation of the Model, and the use of written procedures and protocols as required by this Paragraph.

e. Sewer Mapping Program. Within twenty-eight (28) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Sewer Mapping Program to update its Sewer System maps and update the capabilities and procedures for utilization of the City's future Geographic Information System ("GIS") map of the City's WCTS. At minimum, the Sewer Mapping Program shall:

(1) Enable the City to produce maps of the WCTS using GIS technology;

(2) Be designed in such a manner so as to allow electronic integration with the City's computer-based collection system model and computer-based operations and maintenance information management system;

(3) Enable the City to produce maps showing the location of all manholes, Gravity Sewer Lines, Pump Stations, Force Mains, valves, inverted siphons and the WWTPs;

(4) Enable the City to produce maps capable of integrating electronically the locations of sewer service connections on lines that are televised;

(5) Enable the City to produce maps that include attribute data for the City's WCTS including, but not limited to, size, material, estimated age or age range, slope, invert elevation, and rim elevation;

(6) Enable the City to produce maps that delineate the spatial boundaries of all Sewersheds within the WCTS;

(7) Enable the City to produce maps that can integrate electronically available maps that show the location of surface streets and street addresses, permitted Fats, Oils and Grease ("FOG"; see Paragraph [REF _Ref387221731 \w \h]) customers, surface water bodies and political boundaries;

(8) Enable the City to produce maps in a manner that will allow use by all Sewer System operation and maintenance crew leaders in the field;

(9) Allow entry and mapping of work orders to identify and track problems geographically such as stoppages, service interruptions, and SSOs, and to assist in the planning and scheduling of maintenance;

(10) Include written standard operating procedures for use of the program, the acquisition and entry of updated mapping data for new assets or changes to existing assets, and updates to system software;

(11) Include locations of each permitted FOG establishment; and

(12) Include an expeditious schedule for the completion of the electronic mapping of Priority Area 1 no later than thirty-eight (38) Months after the Effective Date, of Priority Area 2 no later than forty-eight (48) Months after the Effective Date, and of the rest of the Sewer System no later than fifty-eight (58) Months after the Effective Date.

f. Gravity Sewer System Operations and Maintenance Program. Within twenty-four (24) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Gravity Sewer System Operations and

Maintenance Program to address SSOs, particularly those caused by FOG, roots and/or debris obstructions. At a minimum, the Gravity Sewer System Operations and Maintenance Program shall include the following:

(1) Written preventative operations and maintenance schedules and procedures which shall be scheduled appropriately and shall include, but not be limited to, written procedures for the following:

(a) Inspection and maintenance of all Gravity Sewers, manholes and inverted siphons;

(b) Identifying and documenting Gravity Sewer, manhole and inverted siphon conditions, including grease, roots, and/or debris accumulation;

(c) Identifying maintenance needs; and

(d) Scheduling preventative maintenance work/cleaning which the City may schedule in connection with the SSER Work Plan as described in Paragraph [REF _Ref387218022 \w \h * MERGEFORMAT] above.

(2) An engineering evaluation of potential sulfide and corrosion control options and a summary report of findings, including a recommendation of the preferred sulfide and corrosion control method(s); provided, however, that such corrosion control options and methods shall not apply to components made of plastic or other similar materials.

(3) Prioritization for evaluating the Gravity Sewers based upon the size of the pipe (e.g., starting with the larger pipes and work back to smaller pipes), location of SSOs, community input or other criteria the City finds appropriate.

(4) Inspection of Gravity Sewers, manholes, and inverted siphon easements, including inspection of creek crossings, canal crossings, stream bank encroachment toward Gravity Sewers, manholes and inverted siphons, and easement accessibility (including the need to control vegetative growth or encroachment of man-made structures or activities that could threaten the integrity of the affected Gravity Sewer, manhole, or inverted siphon). Inspections shall include written reports, and where appropriate, representative photographs or videos of appurtenances being inspected (Gravity Sewers, manholes, inverted siphons, creek crossings, canal crossings, etc.).

Inspectors shall promptly report any observed SSOs to their area supervisors and shall record any evidence of SSOs which may have occurred since the last inspection. Any observed SSO shall be promptly reported in accordance with the SORP.

(5) A schedule for the maintenance of easements.

(6) A staffing and funding plan sufficient in structure, skills, numbers and funding to allow completion of the operation and maintenance activities required by this Paragraph [REF _Ref387218300 \w \h * MERGEFORMAT].

(7) Data attributes for the City's mapping program allowing program data to be compared in the City's IMS against other pertinent data such as the occurrence of SSOs, including repeat SSO locations and permit violations.

(8) An inventory management system that includes:

(a) A list of critical equipment and critical spare parts;

(b) A list of where critical spare parts and critical equipment may be secured to allow repairs in a reasonable amount of time for those spare parts and critical equipment that are not stored by the City, including spare pipe having a diameter of 24 inches or greater; the list shall also set forth an inventory of spare parts and critical equipment stored by the City, as applicable; and

(c) Written procedures for updating the critical spare parts and equipment inventories in the IMS.

(9) Reports which list equipment problems and the status of work orders generated during the prior Month.

g. Pump Station Operations and Preventative Maintenance Program. Within twenty-one (21) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Pump Station Operations and Preventative Maintenance Program to facilitate proper operation and maintenance activities associated with the Pump Stations within the WCTS. At a minimum, the Pump Station Operations and Preventative Maintenance Program shall include the following:

(1) Identification of the means and modes of communication between Pump Stations, field crews, and supervising staff.

(2) Technical specifications of each Pump Station within the WCTS.

(3) A description of each Pump Station monitoring system which shall continuously monitor, report, and transmit information for each Pump Station.

(4) Written preventative operations and maintenance schedules and procedures which shall be scheduled appropriately and shall include, but not be limited to, written procedures for periodic service and calibration of instrumentation such as flow meters, liquid level sensors, alarm systems, elapsed time meters, and remote monitoring equipment. Such written preventative operations and maintenance schedules and procedures shall also include predictive (including non-physical inspections) and/or physical inspection and service for all Pump Stations including, but not limited to:

(a) Reading, recording and maintaining records of information from the elapsed time meters and pump start counters;

(b) Observing and documenting wet well conditions, including grease and/or debris accumulation;

(c) Checking and re-setting, as necessary to improve system performance, wet well pumping points (e.g., floats);

(d) Checking, recording and maintaining records of system pressure(s);

(e) Checking SCADA and/or alarm components;

(f) Checking stand-by power sources;

(g) Checking motor electrical system, including, but not limited to, line voltage on each leg quarterly, current draw on each leg quarterly, and resistance of windings on each leg quarterly; and

(h) Identifying maintenance needs.

(5) Written standard emergency/reactive operations and maintenance procedures. The City may use portable pumps, portable generators or alternative power sources as it deems appropriate. At a minimum, the standard emergency/reactive Pump Station operating procedures shall include:

(a) Criteria used to determine the need for emergency operations and maintenance;

(b) Initiation/use of stand-by power (e.g., portable generators), where applicable;

(c) Initiation/use of portable pump (e.g., bypass/pump-around operations), where applicable;

(d) Evaluation of the need for additional equipment for emergency/reactive operations, including, but not limited to, additional portable generators and/or additional portable pumps (for pump-around operations);

(e) Evaluation of the need for on-site standby power (e.g., on-site generator and/or second electrical feed from the power grid) for each Pump Station should the City choose, not to have a portable pump available for the Pump Station; and

(f) Establishing standard forms, reporting procedures and performance measures for emergency/reactive operations and maintenance.

(6) An inventory management system that includes:

(a) A list of critical equipment and critical spare parts;

(b) A list of where critical spare parts and critical equipment may be secured to allow repairs in a reasonable amount of time for those spare parts and critical equipment that are not stored by the City; the list shall also set forth an inventory of spare parts and critical equipment stored by the City, as applicable; and

(c) Written procedures for updating the critical spare parts and equipment inventories in the IMS.

(7) Reports which list equipment problems and the status of work orders generated during the prior Month.

(8) A staffing and funding plan sufficient in structure, skills, numbers and funding to allow completion of the operations and maintenance activities required by this Paragraph [REF _Ref387218349 \w \h * MERGEFORMAT].

h. Fats, Oils and Grease ("FOG") Control Program. Within eighteen (18) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a FOG Control Program. At a minimum, the FOG Control Program shall apply City-wide and include the following:

(1) A FOG characterization study that shall identify the sources of FOG causing problems in the WCTS and the most appropriate method or mechanism for addressing those sources.

(2) The legal authority to control the discharge of FOG into the WCTS, including the ability to implement a permit and enforcement program for commercial and industrial sources.

(3) Specification of accepted devices to control the discharge of FOG into the WCTS.

(4) Establishment of standards for the design and construction of FOG control devices including standards for capacity and accessibility, site map, design documents and as-built drawings.

(5) Establishment of FOG control device management, operations and maintenance standards, or best management practices, that address onsite record keeping requirements, cleaning frequency, cleaning standards, use of additives, and ultimate disposal.

(6) Establishment of construction inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements, to assure that FOG control devices are constructed in accordance with established design and construction standards.

(7) Establishment of compliance inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements to assure that FOG control devices are being managed, operated and maintained in accordance with the established management, operation and maintenance standards or best management practices.

(8) Establishment of a FOG disposal manifest system, with the included requirements that FOG and septage not be comingled and that the point of origin be specified on the manifest.

(9) Establishment of an enforcement program, including specific enforcement mechanisms, to ensure compliance with the FOG Control Program.

(10) Establishment of a compliance assistance program to facilitate training of FOG generators and their employees.

(11) Establishment of a comprehensive public education program directed at reducing the amount of FOG entering the WCTS from

residences.

(12) Establishment of staffing (technical and legal) and equipment requirements to ensure effective implementation of the FOG Control Program.

(13) A regularly maintained list of current commercial establishment FOG generators including a description of their FOG generating processes and estimated average quantity of FOG generated daily.

(14) Establishment of performance indicators to be used by the City to measure the effectiveness of the FOG Control Program.

(15) A schedule to review, evaluate and revise the FOG Control Program on at least an annual basis. Any revisions to the FOG Control Program shall be submitted to the EPA in accordance with Paragraphs [REF _Ref387218411 \w \h * MERGEFORMAT] through [REF _Ref387218427 \w \h * MERGEFORMAT] and [REF _Ref387218452 \w \h * MERGEFORMAT] of this Consent Decree.

Within six (6) Months after the EPA's approval of the FOG Control Program, the City shall enact the necessary City ordinances for the immediate implementation of the Program. After the ordinances become effective as provided by State law, the City shall implement the FOG Control Program, which shall be incorporated into, and become enforceable under, this Consent Decree.

i. Capacity Assurance Program. Within thirty-six (36) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Capacity Assurance Program ("CAP"), including a schedule for full implementation of the program not to exceed forty-eight (48) Months after the Effective Date. Pursuant to the capacity assessment performed in accordance with Paragraphs [REF _Ref387218022 \w \h * MERGEFORMAT] and [REF _Ref387217918 \w \h * MERGEFORMAT] above, the CAP shall identify any portion of the Sewer System with insufficient capacity under either peak wet weather, or average conditions, or both. It shall also analyze all portions of the WCTS that hydraulically impact all known SSOs and all components of a WWTP that may contribute to violations of the NPDES Permits. The CAP shall assess peak flow capacity of all Pump Stations, all Major Sewer Gravity Lines, all Force Mains and siphons and their respective related appurtenances, all known SSO locations, and any other portions of the WCTS that must be assessed so as to allow a technically-sound evaluation of the causes of SSOs and Prohibited Bypasses at a WWTP for existing and proposed flows. The CAP shall enable the City to authorize new sewer service connections, or increases in flow from existing sewer service connections, only after the City certifies that the analysis procedures contained in the approved CAP have

been used and that the City has determined, based on those procedures, that there is Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity as set forth below. The Capacity Assurance Program shall include, at a minimum, the following:

(1) The technical information, methodology, and analytical techniques, including the model or software, to be used by the City to calculate collection, transmission, and treatment capacity.

(2) The means by which the City will integrate its certification of Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity with the issuance of building permits by the City and the City's acquisition of new or existing sewers from other owners.

(3) The means by which the City will integrate its certification of Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity with the requirements of Mississippi Commission on Environmental Quality Regulation 11 Miss. Admin. Code Part 6, Ch.1, Rule 1.1.1.C(1)(b) and Rule 1.1.6.B(2) and B(4), regarding the certification of capacity for the construction of new sewer lines that provide new flow into the City's Sewer System.

(4) The technical information, methodology, and analytical techniques, including the model or software, to be used by the City to calculate the net (cumulative) increase or decrease in volume of wastewater introduced to the WCTS as a result of the City's authorization of new sewer service connections and increases in flow from existing connections and the completion of: (i) specific projects that add or restore collection or transmission capacity to the WCTS or add or restore adequate treatment capacity at a WWTP as required by 40 C.F.R. § 133 ("Capacity Enhancing Projects"), (ii) specific projects that reduce peak flow through removal of I/I ("I/I Projects"), and (iii) permanent removal of sewer connections ("Removal of Connections").

(5) An Information Management System capable of tracking the accumulation of banked credits, earned pursuant to Paragraph [REF _Ref387218542 \w \h * MERGEFORMAT] below, from completion of Capacity Enhancing Projects, I/I Projects and Removal of Connections; the capacity-limited portion of the Sewershed in which those credits were earned; and the expenditure of such credits on future increases in flow from new or existing

sewer service connections in that capacity-limited portion of the Sewershed.

(6) All evaluation protocols to be used to calculate collection, transmission, and treatment capacity including, but not limited to, standard design flow rate rules of thumb regarding pipe roughness, manhole head losses, as-built drawing accuracy (distance and slope), water use (gallons per capita per day), projected flow impact calculation techniques, and metering of related existing peak flows (flows metered in support of analysis and/or manual observation of existing peak flows). The City may identify sewer line segments which have been specifically designed and constructed to operate under surcharge conditions (e.g., with welded or bolted joints) and identify the level of surcharge for those segments.

(7) Capacity Certifications. Except as provided in Paragraphs [REF _Ref387218643 \w \h * MERGEFORMAT] through [REF _Ref387218698 \w \h * MERGEFORMAT] below, the City shall implement the CAP by authorizing a new sewer service connection, or additional flow from an existing sewer service connection, only after it certifies that the analysis procedures contained in the CAP have been used and that the City has determined, based on those procedures, that there is Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity as defined below:

(a) Treatment Capacity Certifications. The City's certification of "Adequate Treatment Capacity" shall confirm that, at the time a WWTP receives the flow from a proposed sewer service connection(s) or increased flow from an existing sewer service connection(s), when combined with the flow predicted to occur from all other authorized sewer service connections (including those which have not begun to discharge into the WCTS), the WWTP will not be in "non-compliance" for quarterly reporting as defined in 40 C.F.R. Part 123.45, Appendix A. In addition, the City's certification of "Adequate Treatment Capacity" shall confirm that the new or increased flow to a WWTP will not result in a Prohibited Bypass.

(b) Transmission Capacity Certifications. The City's certification of "Adequate Transmission Capacity" shall confirm that each Pump Station, through which the proposed additional flow from new or existing sewer service connections would pass to

the WWTP receiving such flow, has the capacity to transmit, with its largest pump out of service, the existing one (1) hour peak flow passing through the Pump Station, plus the addition to the existing one (1) hour peak flow predicted to occur from the proposed connection, plus the addition to the existing one (1) hour peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the WCTS.

(c) Collection Capacity Certifications. The City's certification of "Adequate Collection Capacity" shall confirm that each Major Gravity Line, through which the proposed additional flow from new or existing connections would pass, has the capacity to carry the existing one (1) hour peak flow passing through the Major Gravity Line, plus the addition to the existing one (1) hour peak flow from the proposed connection, plus the addition to the existing one (1) hour peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the WCTS without causing a Surcharge Condition.

(d) Definition of "One (1) Hour Peak Flow" and "Surcharge Condition." The terms set forth below are defined herein only for purposes of implementation of the CAP. The City agrees that it shall not use these definitions for purposes of establishing any design criteria for the implementation of rehabilitation measures to the Sewer System. The term "one (1) hour peak flow" shall mean the greatest flow in a sewer averaged over a sixty (60) minute period at a specific location expected to occur as a result of a representative 2 year-24 hour storm event. The term "Surcharge Condition" shall mean the condition that exists when the supply of wastewater resulting from the one (1) hour peak flow is greater than the capacity of the pipes to carry it and the surface of the wastewater in manholes rises to an elevation greater than twenty-four (24) inches above the top of the pipe or within three (3) feet of the rim of the manhole, and the sewer is under pressure or head, rather than at atmospheric pressure, unless the City has, pursuant to Paragraph [REF _Ref387221235 \w \h * MERGEFORMAT] above, identified that pipe segment and manhole as designed to operate in that condition, in which case the identified level of surcharge will be used.

(8) Minor Sewer Connections. For minor sewer service connections, the City may elect to perform a monthly capacity analysis for each Sewershed by certifying that the Sewershed has adequate capacity,

as defined above, to carry existing peak flows and the additional flows generated by all such minor sewer service connections projected to be approved in the subsequent month. For any Sewershed which can be so certified, the City may approve these projected minor sewer service connections without performing individual certifications for each connection. For the purposes of this Paragraph only, a "minor sewer service connection" is a connection with an average flow not to exceed 2,500 gallons per day.

(9) Capacity for Treatment, Transmission, and Collection in Lieu of Certification. The City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot satisfy the requirements of Paragraph [REF _Ref387221283 \w \h * MERGEFORMAT] above, provided the City certifies that all of the following provisions, where applicable, are satisfied:

(a) The City is in substantial compliance with this Consent Decree;

(b) The sewer lines which will convey the proposed additional flow from new or existing sewer service connections have not experienced dry weather SSOs due to inadequate capacity within the previous twelve (12) Months; or, in the alternative, the causes of any dry weather SSOs due to inadequate capacity have been eliminated;

(c) The City has identified the sewer line segment(s), Pump Station(s) and/or wastewater treatment systems that do not meet the conditions for certification of Adequate Treatment Capacity, Adequate Collection Capacity, and/or Adequate Transmission Capacity;

(d) The City shall complete, prior to the time the proposed additional flow from new or existing sewer service connections is introduced into the WCTS, specific Capacity Enhancing Projects, I/I Projects, and/or Removal of Connections which will add sewer capacity or reduce peak flows to the identified sewer line segment(s), Pump Station(s), and wastewater treatment system(s) in accordance with the factors set forth in Paragraphs [REF _Ref387221348 \w \h * MERGEFORMAT] and [REF _Ref387221388 \w \h * MERGEFORMAT] below;

(e) Where the City has undertaken specific Capacity Enhancing Projects that provide for additional off-line storage or additional treatment capacity, and/or specific Removal of Connections to satisfy the requirements of Paragraph [REF _Ref387221430 \w \h * MERGEFORMAT] above, the estimated added capacity resulting from such projects must be equal to or greater than the estimated amount of any proposed additional flow;

(f) Where the City has undertaken specific I/I Projects or Capacity Enhancing Projects, other than those that provide for additional off-line storage or additional treatment capacity, to satisfy the requirements of Paragraph [REF _Ref387221430 \w \h * MERGEFORMAT] above, the estimated reduction in peak flows or added capacity resulting from such projects must exceed the estimated amount of any proposed additional flow by a factor of 3:1;

(g) Commencing within twelve (12) Months after the EPA's approval of the CAP and annually thereafter, the City has performed a review of specific Capacity Enhancing Projects and I/I Projects undertaken to determine if actual added capacity and peak flow reductions are in line with what the City originally estimated for such projects; and the City has used the results of this review to adjust future estimates as necessary;

(h) Any new sewer service connection or increase in flow to an existing connection authorized prior to the completion of a necessary added capacity or peak flow reduction project as set forth above shall be conditioned upon completion of such project prior to the time that the new sewer service connection or flow increase is introduced into the WCTS; and

(i) In implementing the provisions of this Paragraph [REF _Ref387218542 \w \h], the City may use a "banking credit system" for the sewer line segment(s), Pump Station(s), and/or wastewater treatment systems for which the City is not able to satisfy the conditions set forth in Paragraph [REF _Ref387221283 \w \h * MERGEFORMAT] above. The addition of sewer capacity and/or reduction in peak flows to the affected sewer line segment, Pump Station, or wastewater treatment system from (i) the completed sanitary sewer projects set forth on Appendix A, (ii) the Early Action Projects set forth on Appendix B, and/or (iii) Capacity Enhancement Projects, I/I Projects, and Removal of Connections completed after the Effective Date of this Consent

Decree may be accumulated in the form of credits in the banking credit system in accordance with the factors set forth in Paragraphs [REF _Ref387221348 \w \h] and [REF _Ref387221388 \w \h] above. Such credits may then be used for authorization of future sewer service connections or increases in flow from existing connections to the affected sewer line segment, Pump Station, or wastewater treatment system in the capacity-limited portion of the Sewershed. Increases in flow from all authorized new sewer service connections or increases in flow from existing connections occurring between the Effective Date of this Consent Decree and when the City begins full implementation of the CAP shall be deducted from any such accumulated credits in the banking credit system.

(10) Essential Services. Notwithstanding the above provisions, the City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot certify that it has Adequate Transmission Capacity, Adequate Collection Capacity, and/or Adequate Treatment Capacity as defined above for health care facilities, public safety facilities, and public schools and, subject to the EPA review and approval, for government facilities; and in those cases where a pollution or sanitary nuisance condition exists, as determined by the local county health department or its regulatory successor, as the result of a discharge of untreated wastewater from an on-site septic tank.

(11) Existing Illicit Connections. Notwithstanding the provisions above, the City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot certify that it has Adequate Transmission Capacity and/or Adequate Collection Capacity and/or Adequate Treatment Capacity as defined above, for any illicit connections to the municipal separate storm sewer system ("MS4") which would otherwise result in the discharge of municipal sewage to waters of the State.

(12) Certifications. All certifications pursuant to this Paragraph [REF _Ref387218080 \w \h * MERGEFORMAT] shall be made by a professional engineer registered in the State of Mississippi and shall be approved by a responsible party of the City as defined by 40 C.F.R. § 122.22(b). The City shall maintain all such certifications, and all data on which the certifications are based, in its offices for inspection by the EPA and MDEQ. The EPA and MDEQ may request, and the City shall provide, any and all documentation necessary to support any certification made by the

City pursuant to this Paragraph [REF _Ref387218080 \w \h * MERGEFORMAT], and make available, to the extent possible, individuals providing such certifications to meet with the EPA and MDEQ.

j. Training Program. Within thirty-two (32) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a Training Program, including a schedule for full implementation of the program not to exceed twelve (12) Months after its approval by the EPA. The Training Program shall include, at a minimum, the following:

(1) Technical Training. The technical training component shall include, at a minimum, the following:

(a) Employee technical training and refresher technical training requirements (curriculum) that ensure that each City employee has a level of knowledge, commensurate with duties, of the overall functions of the City's infrastructure;

(b) A description of outside technical training and networking opportunities, such as conferences and seminars, that are made available to City employees;

(c) A description of the extent to which employee certification, at the State or at the City level, is required as a basis for obtaining or maintaining a position;

(d) Records of technical training, including on-the-job training, which shall be maintained in an information management system and shall describe the degree to which completed technical training and on-the-job training is tied to promotion and pay; and

(e) A description of the technical training required before an employee can undertake specific work assignments or tasks.

(2) Skills Training. The skills training component shall include, at a minimum, the following:

(a) Employee skills training and refresher skills training requirements (curriculum) that ensure that each City employee has a level of knowledge, commensurate with duties, of the specific equipment to be used and the procedures to be followed in carrying out duties;

(b) A description of outside skills training opportunities,

such as manufacturers' training, that are made available to employees;

(c) A description of the extent to which employee certification, at the State or at the City level, is required as a basis for obtaining or maintaining a position;

(d) Records of skills training, including on-the-job training, which shall be maintained in an information management system) and shall describe the degree to which completed skills training and on-the-job training is tied to promotion and pay; and

(e) A description of the skills and on-the-job training required before an employee can undertake specific work assignments or tasks.

(3) Safety Training. The safety training component shall include, at a minimum, the following:

(a) Employee safety training and refresher safety training requirements (curriculum) that ensure that each City employee has level of knowledge regarding on-the-job safety that is commensurate with the employee's equipment and work environment;

(b) A description of the extent to which employee safety certification at the State or at the City level is required as a basis for obtaining or maintaining a position;

(c) Records of safety training, including on-the-job training, which shall be maintained in an information management system and shall describe the degree to which completed safety training and on-the-job training is tied to promotion and pay; and

(d) A description of the safety training required before an employee can undertake specific work assignments or tasks.

k. Chronic SSO Advanced Remote Monitoring Program. Within twelve (12)~~sixteen (16)~~ Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a list of SSO locations in the WCTS that have experienced more than one (1) wet-weather related SSO in the previous twelve (12)-month period (Chronic SSO List). The City shall designate on the Chronic SSO List which SSO locations it proposes to install and maintain manhole and/or sewer surcharge level remote monitoring devices in accordance with the provisions of this Paragraph 23.k.

For those SSO locations not so designated, the City shall include along with and as a part of the Chronic SSO List Deliverable a demonstration that such remote devices are not necessary because either the City has a definitive, detailed plan and expeditious deadline for addressing the cause of the SSO at that location, the SSOs at that location were the result of an extraordinary rain event such as a hurricane or tropical storm, or two (2) or more SSO locations are related in such a manner that a single remote monitoring device can provide the required real-time alert for likely SSOs at the multiple locations. The Chronic SSO List Deliverable shall also include a description of the thresholds (Thresholds) to be established for the remote monitoring devices that will trigger real-time alerts of a likely SSO event or events. The City shall install and maintain manhole and/or sewer surcharge level remote monitoring devices at the SSO locations so designated~~identified~~ on the Chronic SSO List~~Appendix F, attached hereto and incorporated herein,~~ in accordance with the provisions of this Paragraph 23.k ~~below~~ within four (4) Months of the EPA's approval of the Chronic SSO List.

~~(1) After this initial sixteen (16) Month period, the City shall on a quarterly basis determine whether any SSO location in the WCTS experienced more than one (1) wet-weather related SSO in the previous twelve (12) month period. The City shall then install and maintain manhole and/or sewer surcharge level remote monitoring devices at such SSO locations within four (4) Months after making such determination.~~

~~(2)~~(1) The remote monitoring devices shall monitor sewer surcharge levels and shall be designed to send to the City real-time alerts of a likely SSO event or events when the Tthresholds specified by the City ~~(Thresholds)~~ are attained and/or exceeded, thereby improving the City's responsiveness to SSOs and sewer operations with the goal of preventing SSOs from occurring at these SSO locations. ~~Within fourteen (14) Months after the Effective Date of this Consent Decree, the City shall submit its Thresholds to the EPA for review and approval.~~

(2) The City shall expeditiously inspect a SSO location after a remote monitoring device indicates that the applicable Threshold has been attained and/or exceeded for that SSO location. The City shall keep records with respect to all remote monitoring devices and SSO locations for a period of at least five (5) years. The City shall report all surcharge conditions identified by the remote monitoring devices in the Quarterly Reports pursuant to Paragraph [REF _Ref485825796 \w \h] of this Consent Decree. The City shall report all SSOs discovered pursuant to the remote monitoring devices in accordance with the NPDES Permits, the SORP, and the Quarterly and Annual Reports pursuant to Paragraphs [REF

_Ref485825796 \w \h]- and [REF _Ref485634140 \w \h] of this Consent Decree.

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(3) If the City elects to monitor multiple SSO locations through a single remote monitoring device, the City shall expeditiously inspect all such related SSO locations when the applicable remote monitoring device indicates that the specified Thresholds have been attained and/or exceeded. The City shall also evaluate the benefits of this technology and other remote wastewater detection technologies for continued use within the WCTS to increase efficiency in SSO prevention/response and to enhance hydraulic modeling efforts.

(4) One (1) year after the EPA's approval of the initial Chronic SSO List above and each year thereafter, the City shall submit to the EPA for review and approval an annual update to the Chronic SSO List that provides for the following:

(a) The identification of additional SSO location in the WCTS that experienced more than one (1) wet-weather related SSO in the previous twelve (12)-month period. The City shall designate on the updated Chronic SSO List which of these new SSO locations it proposes to install and maintain manhole and/or sewer surcharge level remote monitoring devices in accordance with the provisions of this Paragraph 23.k. For those new SSO locations not so designated, the City shall include along with and as a part of the updated Chronic SSO List a demonstration that such remote devices are not necessary because either the City has a definitive, detailed plan and expeditious deadline for addressing the cause of the SSO at that location, the SSOs at that location were the result of an extraordinary rain event such as a hurricane or tropical storm, or two (2) or more SSO locations are related in such a manner that a single remote monitoring device can provide the required real-time alert for likely SSOs at the multiple locations. The City shall then install and maintain manhole and/or sewer surcharge level remote monitoring devices at such new SSO locations within four (4) Months after the EPA's approval of the updated Chronic SSO List.

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If applicable, a demonstration that~~The City shall maintain these~~ remote monitoring devices at a particular SSO location(s) on the Chronic SSO List should be removed from the list because

~~required by this Paragraph~~ [REF _Ref485890386 \w \h] ~~until such time as the City can demonstrate to the EPA that~~ the cause of the SSO at the ~~a~~ particular location(s) has been appropriately addressed and such location(s) has not experienced more than one (1) wet-weather related SSO in the previous twelve (12)-Month period.

~~(5)~~(c) If applicable, a demonstration that, a~~-~~

~~(6)~~ ~~A~~s an alternative to placing a remote monitor at each SSO location on the Chronic SSO list as otherwise required by this Paragraph [REF _Ref485890386 \w \h], ~~the City may elect to reduce the number of~~ remote monitoring devices should be removed because ~~if it can demonstrate to the EPA that t~~two (2) or more SSO locations are related in such a manner that a single remote monitoring device can provide the required real-time alert for likely SSOs at the multiple SSO locations ~~specified by the City~~. ~~If the City elects to monitor multiple SSO locations through a single remote monitoring device, the City shall expeditiously inspect all such related SSO locations when the applicable remote monitoring device indicates that the specified Thresholds have been attained and/or exceeded. The City shall also evaluate the benefits of this technology and other remote wastewater detection technologies for continued use within the WCTS to increase efficiency in SSO prevention/response and to enhance hydraulic modeling efforts.~~

24. Permits. Where any compliance obligation under this Section requires the City to obtain a federal, state, or local permit or approval, the City shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The City may seek relief under the provisions of Section [REF _Ref322450615 \r \h * MERGEFORMAT] (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the City has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VIII. **CIVIL PENALTY**

25. Within thirty (30) Days after the Effective Date, the City shall pay the sum of $165,600 as a civil penalty as follows: $82,800 to the United States and $82,800 to the State.

26. The City shall pay the civil penalty due to the United States either by use of https://www.pay.gov to the U.S. Department of Justice account, or by FedWire Electronic Funds Transfer ("EFT"), in accordance with instructions provided to the City by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Southern District of Mississippi after

the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which the City shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Mayor, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501
mayor@hattiesburgms.com

on behalf of the City. The City may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and the EPA in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT] (Notices). At the time of payment, the City shall send notice that payment has been made: (i) to the EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at the EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT]; and (iii) to the EPA in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT]. Such notice shall reference the CDCS Number and DOJ case number 90-5-1-1-10964. In the event that full cash payment to the United States is not made within thirty (30) Days of the Effective Date, the City shall also pay to the United States interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

27. The City shall pay the civil penalty due to MDEQ by check payable to the "Mississippi Department of Environmental Quality." The check shall reference the case name and civil action number herein and shall be sent to: Mississippi Department of Environmental Quality, Attn: Jennifer Parish, P.O. Box 2339 Jackson, Mississippi 39225. In the event that full cash payment to MDEQ is not made within thirty (30) Days of the Effective Date, the City shall also pay to MDEQ interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT

28. The City shall satisfactorily implement and complete the Supplemental Environmental Project ("SEP") in accordance with all provisions of Appendix E of this Consent Decree, attached hereto and incorporated herein. The SEP shall be completed in accordance with the schedule set forth in Appendix E.

29. As more particularly described in Appendix E, the SEP shall consist of projects to reduce extraneous flows entering the WCTS through defective private laterals and through illicit connections from residential properties the owners of which face financial hardship as determined under Section B of Appendix E. The total expenditure for the SEP shall be not less

than $220,800, exclusive of certain costs detailed in Section C of Appendix E. The City may use contractors or consultants in planning and implementing the SEP.

30. With regard to the SEP, the City certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the City in good faith estimates that the cost to implement the SEP is $220,800.

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

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

d. That the City has not received and will not receive credit for the SEP in any other enforcement action.

e. That the City will not receive any reimbursement for any portion of the SEP from any other person.

f. That the City is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP and that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could fund the same activity as the SEP. For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, federal loan, or federally-guaranteed loan, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

31. "Satisfactory completion" of the SEP shall include the completion of a minimum number of forty-five (45) repairs or replacements of defective private laterals or removals of illicit connections, and a minimum expenditure of $220,800 of eligible SEP costs.

32. SEP Completion Report. Within thirty (30) Days after the date set for completion of the SEP, the City shall submit a SEP Completion Report to the EPA for review and approval. The SEP Completion Report shall contain all of the following information:

a. A detailed description of the SEP as implemented.

b. A description of any problems encountered in completing the SEP and the

solutions thereto.

c. An itemized list of all eligible SEP costs expended.

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree.

e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

33. The EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate the City's SEP Completion Report.

34. After receiving the SEP Completion Report, the EPA shall notify the City whether or not the City has satisfactorily completed the SEP. If the City has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section [REF _Ref475015844 \w \h] of this Consent Decree.

35. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section [REF _Ref405378877 \w \h] of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

36. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph [REF _Ref387046011 \w \h].

37. Any public statement, oral or written, in print, film, or other media, made by the City making reference to the SEP under this Decree from the date of its execution of this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States et al. v. City of Hattiesburg, taken on behalf of the U.S. Environmental Protection Agency and the Mississippi Department of Environmental Quality to enforce the Clean Water Act and the Mississippi Air and Water Pollution Control Law."

X. **REPORTING REQUIREMENTS**

38. The City shall submit the following reports:

a. Quarterly Reports. Beginning one (1) Month after the first Calendar Quarter following the Effective Date of this Consent Decree, and one (1) Month after each subsequent Calendar Quarter thereafter until termination of the Consent Decree, the City shall submit to the EPA for review and approval a Quarterly Report that shall include the date, time, location, source, estimated duration, estimated volume, receiving

water (if any), and cause of all SSOs occurring in the applicable three (3)-Month period in a tabulated electronic format. ~~Beginning sixteen (16) Months after the Effective Date of this Consent Decree,~~ When available pursuant to Paragraph [REF _Ref485890386 \w \h], of this Consent Decree, each Quarterly Report shall also ~~(i) indicate whether a reported SSO experienced more than one (1) wet-weather related SSO event in the previous twelve (12) month period and (ii)~~ include information on all surcharge conditions identified by the remote monitoring devices as required pursuant to Paragraph [REF _Ref485890386 \w \h] of this Consent Decree.

b. Semi-Annual Reports. Beginning one (1) Month after the first two (2) Calendar Quarters following the Effective Date of this Consent Decree, and one (1) Month after each subsequent two (2) Calendar Quarters until termination of the Consent Decree, the City shall submit to the EPA for review and approval a Semi-Annual Report. Each Semi-Annual Report shall include, at a minimum:

(1) A description of projects and activities completed and milestones achieved during the previous applicable six (6)-Month period pursuant to the requirements of this Consent Decree, in Gantt chart or similar format, including a description of the status of compliance or non-compliance with the requirements of this Consent Decree and, if applicable, the reasons for non-compliance. If any non-compliance cannot be fully explained at the time the report is due, the City shall include a statement to that effect in the report. The City shall investigate to determine the cause of the non-compliance and then shall submit an amendment to the report, including a full explanation of the cause of the non-compliance, within thirty (30) Days after submission of the Semi-Annual Report.

(2) A summary of significant projects and activities anticipated to be performed, and milestones anticipated to be achieved, in the successive applicable six (6)-Month period to comply with the requirements of this Consent Decree, in Gantt chart or similar format.

(3) Any additional information the City determines is appropriate to demonstrate that the City is implementing the remedial actions required under this Consent Decree in an adequate and timely manner.

c. Annual Reports. Beginning two (2) Months after the first full Calendar Year, and two (2) Months after each subsequent Calendar Year until termination of this Consent Decree, the City shall submit to the EPA for review and approval an Annual Report. Each Annual Report shall cover the most recent applicable Calendar Year and

shall include, at a minimum:

(1) A summary of the CMOM Programs implemented or modified pursuant to this Consent Decree, including a comparison of actual performance with any performance measures that have been established.

(2) A trends analysis of the number, volume, duration, and cause of the City's SSOs for the previous two Calendar Years updated to reflect the SSOs that occurred during the previous twelve (12)-Month period except that the first Annual Report shall only include the first twelve (12) Months.

39. Except as otherwise provided in the SORP or ERP, whenever any violation of this Consent Decree or any other event affecting the City's performance under this Consent Decree or its NPDES Permits may pose an immediate threat to the public health or welfare or the environment, the City shall notify, pursuant to Section [REF _Ref463351858 \n \h] (Notices), the EPA and MDEQ orally or by electronic or facsimile transmission as soon as possible, but no later than twenty-four (24) hours after the City first knew of the violation or event. This procedure is in addition to the requirements set forth in Paragraph [REF _Ref405368543 \w \h].

40. All reports shall be submitted to the persons designated in Section [REF _Ref322450461 \r \h * MERGEFORMAT] (Notices).

41. Each report by the City under this Section shall be submitted in accordance with the provisions of Paragraph [REF _Ref387046011 \w \h * MERGEFORMAT] of this Consent Decree. The certification requirement in Paragraph [REF _Ref387046011 \w \h * MERGEFORMAT] does not apply to emergency or similar notifications where compliance would be impractical, including notifications required under Paragraph [REF _Ref405368992 \w \h].

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

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

XI. **STIPULATED PENALTIES**

44. The City shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section [REF _Ref322450784 \r \h * MERGEFORMAT] (Force Majeure). A violation includes failing to

perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

45. Late Payment of Civil Penalty. If the City fails to pay the civil penalty required to be paid under Section [REF _Ref322450322 \r \h * MERGEFORMAT] (Civil Penalty) when due, the City shall pay a stipulated penalty of $1,000 per Day for each Day that the payment is late.

46. The following stipulated penalties shall accrue for each violation identified below:

a. SSOs Reaching Waters. For each SSO that reaches waters of the United States or the State, a stipulated penalty may be assessed as follows:

If SSO Occurs in:	Penalty Per Violation Per Day:
Calendar Years 2019-2021	$500
Calendar Years 2022 until Termination	$1,000

b. Failure to Timely Submit Deliverable. For each day the City fails to Timely submit any Deliverable, a stipulated penalty for each such Deliverable may be assessed as follows:

Period of Noncompliance:	Penalty Per Deliverable Per Day:
1-30 days	$500
31-60 days	$1,000
More than 60 days	$2,000

c. Failure to Timely Implement Work. For each day the City fails to Timely implement any Work, daily stipulated penalties may be assessed for each such item of Work as follows:

Period of Noncompliance:	Penalty Per Violation Per Day:
1-30 days	$500
31-60 days	$1,000
61 days -180 days	$2,000
More than 180 days	$5,000

d. Failure to Timely Report SSOs. For each SSO that the City fails to Timely report in a Quarterly Report as set forth in Paragraph [REF _Ref470788139 \w \h] of this Consent Decree, a stipulated penalty of $5,000 may be assessed.

e. Failure to Timely Implement SEP Milestones. For each Day the City fails to Timely implement a SEP milestone set forth in Section [REF _Ref475018243 \w \h] or Appendix E, daily stipulated penalties may be assessed as follows:

Period of Noncompliance:	Penalty Per Violation Per Day:
1-30 days	$500
~~31-60~~More than 30 days	$1,000

f. Failure to satisfactorily complete the SEP. For the SEP identified in Section [REF _Ref474768983 \w \h] and Appendix E, if the City fails to satisfactory complete the SEP as described, a stipulated penalty of $242,880, minus any creditable expenditures as determined by the EPA, and minus any stipulated penalties already paid under Paragraph 46.e, may be assessed.

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

48. The City shall pay any stipulated penalty within thirty (30) Days of receiving a United States' written demand. The City shall pay fifty (50) percent of the total stipulated penalty amount due to the United States and fifty (50) percent to the State.

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

50. Stipulated penalties shall continue to accrue as provided in Paragraph [REF _Ref324245385 \r \h * MERGEFORMAT], 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 the EPA, after consultation with MDEQ, and is not appealed to the Court, the City shall pay accrued penalties determined to be owing, together with interest, within thirty (30) Days of the effective date of the agreement or the receipt of the EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the City 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, the City shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

51. The City shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph [REF _Ref324245444 \r \h * MERGEFORMAT], except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. The City shall pay stipulated penalties owing to the State in the manner set forth in Paragraph [REF _Ref383433461 \w \h * MERGEFORMAT].

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

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

54. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section [REF _Ref322450868 \r \h * MERGEFORMAT] (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for the City's violation of this Decree or applicable law, including but not limited to an action against the City for statutory penalties, additional injunctive relief, mitigation or offset measures,[ADVANCE \l0][ADVANCE \d0] and/or contempt.[ADVANCE \l0] However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

XII. **FORCE MAJEURE**

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

56. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the City

shall provide notice orally or by electronic or facsimile transmission to the EPA and MDEQ, within 72 hours of when the City first knew that the event might cause a delay. Within seven (7) days thereafter, the City shall provide in writing to the EPA and MDEQ an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the City's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The City shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the City from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The City shall be deemed to know of any circumstance of which the City, any entity controlled by the City, or the City's contractors knew or should have known.

57. If the EPA, after a reasonable opportunity for review and comment by MDEQ, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the EPA, after a reasonable opportunity for review and comment by MDEQ, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

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

59. If the City elects to invoke the dispute resolution procedures set forth in Section [REF _Ref322450892 \r \h * MERGEFORMAT] (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of the EPA's notice. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs [REF _Ref324245533 \r \h * MERGEFORMAT] and [REF _Ref324245536 \r \h * MERGEFORMAT]. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Consent Decree identified to the EPA and the Court.

XIII. **DISPUTE RESOLUTION**

60. 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. The City's failure to seek resolution of a dispute under this Section shall preclude the City from raising any such issue as a defense to an action by the United States to enforce any obligation of the City arising under this Decree.

61. 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 the City sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement between the United States and the City. The United States shall consult with the State during the period of informal negotiations. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below.

62. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State 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 City's position and any supporting documentation relied upon by the City.

63. The United States shall serve its Statement of Position within sixty (60) Days of receipt of the City's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. If within five (5) Days of receiving the United States' Statement of Position, the City requests to confer, the United States agrees to confer (in person or by telephone) with the City, but such a conference shall be concluded no later than twenty-one (21) Days after the issuance of the United States' Statement of Position. Within fourteen (14) Days after the conclusion of the conference, the United States will either reaffirm its Statement of Position or issue an amended Statement of Position. If the United States fails to either reaffirm or amend its Statement of Position within this fourteen (14) Day period, its Statement of Position shall be deemed reaffirmed. The United States' Statement of Position shall be binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

64. The City may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section [REF _Ref322450461 \r \h * MERGEFORMAT] (Notices), a motion requesting judicial resolution of the dispute. If the City did not request to confer with the United States pursuant to preceding Paragraph, the City's motion must be filed within ten (10) Days of receipt of the United States' Statement of Position

pursuant to the preceding Paragraph. If the City requested to confer with the United States pursuant to the preceding Paragraph, the City's motion must be filed within ten (10) Days after the expiration of the fourteen (14) Day period following the conference during which the United States either reaffirms or amends its Statement of Position. The motion shall contain a written statement of the City's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

65. The United States shall respond to the City's motion within the time period allowed by the Local Rules of this Court. The United States shall consult with the State during preparation of its response. The City may file a reply memorandum, to the extent permitted by the Local Rules.

66. Standard of Review. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph [REF _Ref324245586 \n \h], the City shall bear the burden of demonstrating that its position complies with this Consent Decree and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and that it must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

67. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the City under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph [REF _Ref324245630 \r \h * MERGEFORMAT]. If the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section [REF _Ref322450920 \r \h * MERGEFORMAT] (Stipulated Penalties).

XIV. **INFORMATION COLLECTION AND RETENTION**

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

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;

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

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

e. assess the City's compliance with this Consent Decree.

69. Upon request, the City shall provide the EPA and MDEQ or their authorized representatives splits of any samples taken by the City. Upon request, the EPA and MDEQ shall provide the City splits of any samples taken by the EPA or MDEQ.

70. Until five (5) years after the termination of this Consent Decree, the City shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to the City's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, the City shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

71. At the conclusion of the information-retention period provided in the preceding Paragraph, the City shall notify the United States and the State at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, the City shall deliver any such documents, records, or other information to the EPA or MDEQ. The City may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the City asserts such a privilege, it shall provide the following: (a) a title for the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the City. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

72. The City may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that the City seeks to protect as CBI under 40 C.F.R. Part 2, the City shall follow the procedures set forth in 40 C.F.R. Part 2. The City may also assert that information required to be provided under this Section is protected as "trade secrets" under Miss. Code Ann. Section 49-17-39. As to any information that the City seeks to protect as trade secrets under said Section 49-17-39, the City shall follow the procedures set forth in Section 49-17-39.

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

XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

74. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging of this Consent Decree.

75. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA, the MAWPCL, or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph [REF _Ref324245690 \r \h * MERGEFORMAT]. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the City's Sewer System, whether related to the violations addressed in this Consent Decree or otherwise.

76. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Sewer System or the City's violations, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph [REF _Ref324245690 \r \h * MERGEFORMAT].

77. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The City is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the City's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, the MAWPCL, or with any other provisions of federal, State, or local laws, regulations, or permits.

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

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

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

81. 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.

XVI. **COSTS**

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

XVII. **NOTICES**

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

As to the United States:
By Mail:
EES Case Management Unit
Re: DJ # 90-5-1-1-10964
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

By Email:
[HYPERLINK "mailto:eescdcopy.enrd@usdoj.gov"] Re: DJ # 90-5-1-1-10964

And

Chief, NPDES Enforcement and Permitting Branch
Water Protection Division
U.S Environmental Protection Agency, Region 4
ATTN: Richard Elliott
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8691

As to the EPA:
Chief, NPDES Enforcement and Permitting Branch
Water Protection Division
U.S Environmental Protection Agency, Region 4
ATTN: Richard Elliott
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8691

As to the State/MDEQ:
Chief, Environmental Compliance and Enforcement Division
Office of Pollution Control
Mississippi Department of Environmental Quality
P.O. Box 2261
Jackson, MS 39225-2261
(601) 961-5682

As to the City:
Mayor, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501

Director of Engineering, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4540

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

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

XVIII. **EFFECTIVE DATE**

86. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIX. **RETENTION OF JURISDICTION**

87. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections [REF _Ref322450968 \r \h * MERGEFORMAT] and [REF _Ref322450984 \r \h * MERGEFORMAT], or effectuating or enforcing compliance with the terms of this Decree.

XX. **MODIFICATION**

88. Except as otherwise set forth in Paragraphs [REF _Ref383531021 \w \h * MERGEFORMAT], [REF _Ref387753848 \r \h], or [REF _Ref387753878 \w \h] of this Consent Decree, 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. Non-material changes to this Consent Decree (including appendices) may be made by written agreement of the Parties without Court approval.

89. Any disputes concerning modification of this Decree shall be resolved pursuant to Section [REF _Ref322451014 \r \h * MERGEFORMAT] (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph [REF _Ref324245744 \r \h * MERGEFORMAT], 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).

XXI. **TERMINATION**

90. This Consent Decree may be terminated when the United States determines that the City has satisfactorily completed the requirements of Section [REF _Ref322451030 \r \h * MERGEFORMAT] (Compliance Requirements), provided the City has fulfilled all other obligations of this Consent Decree, including payment of the civil penalty and any accrued stipulated penalties as required by this Consent Decree not waived or reduced by the United States. The City may serve upon the United States a Request for Termination, certifying that the City has satisfied those requirements, together with all necessary supporting documentation.

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

92. If the United States, after consultation with the State, does not agree that the Decree may be terminated, the City may invoke Dispute Resolution under Section [REF

_Ref322451081 \r \h * MERGEFORMAT]. However, the City shall not seek Dispute Resolution of any dispute regarding termination until one hundred and twenty (120) Days after service of its Request for Termination.

XXII. **PUBLIC PARTICIPATION**

93. 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. The City and the State each consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the Parties in writing that it no longer supports entry of the Decree.

XXIII. **SIGNATORIES/SERVICE**

94. Each undersigned representative of the City, the State, the EPA, 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.

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

XXIV. **INTEGRATION**

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

XXV. **FINAL JUDGMENT**

97. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and the

City. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXVI. **APPENDICES**

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

"Appendix A" is a list of completed sewer improvement projects, including COMSWIP projects;

"Appendix B" is a list of the Early Action Projects;

"Appendix C" are maps of the Priority Areas;

"Appendix D" is the EPA Region 4 guidance on Capacity, Management, Operation, and Maintenance ("CMOM") programs; and

"Appendix E" is the Supplemental Environmental Project.~~, and~~

~~"Appendix F" is the list of SSOs for the initial monitoring devices.~~

Dated and entered this __ day of _____, 201_

_____
UNITED STATES DISTRICT JUDGE
Southern District of Mississippi

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE UNITED STATES OF AMERICA:

_____

BRUCE S. GELBER
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

_____

VALERIE K. MANN
DC Bar No. 440744
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611
Telephone: 202/616-8756
Facsimile: 202/616-2427
Email: Valerie.mann@usdoj.gov

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

United States Attorney
Southern District of Mississippi

_____

Assistant United States Attorney
Southern District of Mississippi
501 East Court Street
Suite 4.430
Jackson, Mississippi 39201

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

_____
MARY J. WILKES
Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Of Counsel:
WILLIAM B. BUSH, JR.
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, GA 30303

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

_____
MARK POLLINS
Division Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

_____
LOREN DENTON
Branch Chief
Municipal Enforcement Branch
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

_____
ROBERT D. FENTRESS
Attorney-Advisor
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi:

FOR PLAINTIFF STATE OF MISSISSIPPI BY AND THROUGH THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY AND THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY:

_____

GRETCHEN L. ZMITROVICH
MS Bar No. 101470
Senior Attorney
Office of Pollution Control
Mississippi Department of Environmental Quality
P.O. Box 2261
Jackson, MS 39225
Telephone: 601/961-5050
Facsimile: 601/961-5674
Email: GZMITROVICH@mdeq.ms.gov

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi:

FOR THE CITY OF HATTIESBURG:

_____

MAYOR TOBY BARKER
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501

Message

From: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
Sent: 2/28/2017 9:59:35 PM
To: Bush, William [Bush.William@epa.gov]
CC: Fentress, Robert [Fentress.Robert@epa.gov]
Subject: FW: Hattiesburg/ SEP
Attachments: ENV_ENFORCEMENT-#2642150-v2-Hattiesburg__draft_SEP_proposal.docx

Bill,

Ex. 5 AC/AWP/DP

--Valerie

From: Mann, Valerie (ENRD)
Sent: Tuesday, February 21, 2017 11:00 AM
To: 'Fentress, Robert' <Fentress.Robert@epa.gov>; Bush, William <Bush.William@epa.gov>
Subject: RE: Hattiesburg/ SEP

Bob and Bill,

Ex. 5 AC/AWP/DP

Thanks,
Valerie
616 8756

From: Fentress, Robert [mailto:Fentress.Robert@epa.gov]
Sent: Tuesday, February 21, 2017 10:41 AM
To: Bush, William <Bush.William@epa.gov>; Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>
Subject: RE: Hattiesburg

Yes. What's the time frame?

Robert D. Fentress
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-7023
fentress.robert@epa.gov

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From: Bush, William
Sent: Tuesday, February 21, 2017 10:40 AM
To: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Cc: Fentress, Robert <Fentress.Robert@epa.gov>
Subject: RE: Hattiesburg

Or Bob, if Valerie is not working on it or doesn't have time, do you have time?

From: Bush, William
Sent: Tuesday, February 21, 2017 10:39 AM
To: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Cc: Bush, William <Bush.William@epa.gov>
Subject: Hattiesburg

Hi, Valerie. Are you working on the Ex. 5 AC/AWP/DP If not, do you have time to give it a shot?

Message

From: Elliott, Richard [Elliott.Richard@epa.gov]
Sent: 5/9/2017 12:17:55 PM
To: Bush, William [Bush.William@epa.gov]; Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
CC: Sayre, Dennis [Sayre.Dennis@epa.gov]; Fentress, Robert [Fentress.Robert@epa.gov]
Subject: RE: Revised draft response to Valerie for your review

Dennis and I are in the field right now but will make the time for a conference call as needed. We are on central time currently so 10:30 am eastern works better for us.

With regards to the type of monitoring equipment, we think what the City is suggesting is fine assuming both of us are talking about the same device used in a manner we know to be appropriate. We will clarify on the conference call.

Richard Elliott, P.E., PMP
Environmental Engineer

From: Bush, William
Sent: Monday, May 08, 2017 12:03 PM
To: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Cc: Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Fentress, Robert <Fentress.Robert@epa.gov>; Bush, William <Bush.William@epa.gov>
Subject: RE: Revised draft response to Valerie for your review

Thanks, Valerie.

Ex. 5 Attorney Client (AC)

We are trying to set up a quick call with them for today or on Wednesday between 10:30 and 3:30. We'll let you know what time and hopefully one of you is available then.

From: Mann, Valerie (ENRD) [mailto:Valerie.Mann@usdoj.gov]
Sent: Monday, May 08, 2017 9:52 AM
To: Bush, William <Bush.William@epa.gov>
Subject: FW: Revised draft response to Valerie for your review

Bill,

Ex. 5 Attorney Client (AC)

From: John Milner [mailto:jmilner@brunini.com]
Sent: Wednesday, May 03, 2017 6:56 PM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>
Cc: Bush.William@epa.gov
Subject: FW: Revised draft response to Valerie for your review

Valerie,

Please see the supplemented versions of my responses to your action items 10. and 12, with available applicable attachments, as well as supplemental comments and questions concerning the Capacity Assurance Program (CAP) provisions of the draft consent decree (CD) and a request for a conference call concerning all of these issues:

> 10. The City will send out the SSO list in an excel spreadsheet (John, Bill B could not find an email where you sent that already so please resend).
>
> **Attached please find the requested spreadsheet of the COH's SSO list from the period of January 1, 2012 through September 30, 2016. Also attached are ArcGIS shape files which map the calls that are related to the SSO list. These shape files may contain some inaccuracies due to data conversion that may result in a slightly different total number of points being located on the map. This process is being refined currently and the attached shapefile is being sent as part of a request by EPA staff members at the last Atlanta meeting at Region 4 headquarters.**
>
> 12. The City will submit draft language for new Paragraph 23.k – Chronic SSO Advanced Monitoring Program to replace current Paragraph 23.a.(6) using EPA's original language as much as possible.
>
> **As part of the discussion for drafting this language, the City needs guidance from the EPA. In an effort to be effective with regard to compliance and cost, the City has tried to look at methodology of implementation. One matter that has been discussed relates to the monitoring of "successive SSOs" (which could also be referred to as "dependents SSOs"). Could these SSOs be monitored at a common flow point such as a common lift station? Also, the original language in the CD called for flow monitoring each SSO**

location. Can other equipment be considered such as high water sensors and head sensors? These devices are more easily implemented and are more cost effective than a flow monitoring system. The goal is to assess the potential cost to the City of implementing a program that would be acceptable under the CD.

On another issue, as stated in my last e-mail, the City is also requesting clarification regarding implementation of the CAP. The CD CAP provisions currently require the City to manage a "banking" system for credits in relation to capacity assurance. When would projects be eligible for consideration in the "banking" system? In Appendix A, the City has outlined projects that have been recently completed to improve the sewer collection and treatment system. If the City develops a methodology for crediting projects, would the City be able to bank credits for these documented projects? Also, would the Early Action Projects outlined in Appendix B be eligible? The goal here is to determine the value of the "bank" at the point of implementation of the CAP. The City needs to know the answers to these (and perhaps other) questions at this point so that the City will have confidence that it will be able to comply with the CAP provisions of the CD.

Valerie and Bill, the City believes that it would be advantageous to schedule a conference call among the City, EPA and DOJ next week to discuss these issues so that applicable CD language can be proposed by the City to address them. The technical and operational details relating to these issues are easier to explain, discuss and obtain answers in a conference call setting. I look forward to your response regarding the conference call request. Thanks

John

From: Shea McNease [mailto:Shea@sd-w.com]
Sent: Wednesday, May 03, 2017 5:16 PM
To: John Milner
Subject: RE: Revised draft response to Valerie for your review

John,

Please find my responses to the earlier email request from the DOJ and EPA.

10. The City will send out the SSO list in an excel spreadsheet (John, Bill B could not find an email where you sent that already so please resend).

Attached please find the requested spreadsheet of the COH's SSO list from the period of January 1, 2012 through September 30, 2016. Also included are ArcGIS files which map the calls related to the SSO list. The shapefiles may contain some inaccuracies due to data conversion that may result in a different number of points being on the map. This process is being refined currently and the attached shapefile is being sent as part of a request made at the last meeting between the EPA and the COH.

12. The City will submit draft language for new Paragraph 23.k – Chronic SSO Advanced Monitoring Program to replace current Paragraph 23.a.(6) using EPA's original language as much as possible.

As part of the discussion for drafting this language we have found a need for guidance from the EPA. In an effort to be effective in terms of compliance and cost we have tried to look at methodology of implementation. One matter we have discussed is in the monitoring of successive SSOs or dependents SSOs. Could these SSOs be monitored at a common flow point such as a common lift station? Also, the original language in the CD called for flow monitoring each SSO location. Can other equipment be considered such as high water sensors and head sensors. These devices are more easily implemented and cost effective than a flow monitoring system. The goal is to assess the potential cost to the City of implementing a program that would be acceptable under the CD.

In relation to the CAP, the COH is also requesting some clarification on implementation. In the CD the COH is required to manage a "banking" system for credits in relation to capacity assurance. When would projects be eligible for consideration in the "banking" system? In Appendix A the City has outlined projects that have been

recently completed to improve the sewer collection and treatment system. If the City develops a methodology for crediting projects would we be able to bank credits retroactively for these documented projects. Also, would the Early Action Projects outlined in Appendix B be eligible? The goal here is to determine the value of the "bank" at the implementation of the program.

It would be advantageous if we could put together a conference call with the EPA to discuss some of these matters and bring this language to a close. Some of these issues are easier to explain verbally rather than in writing.

I hope that you find this helpful. Let me know if there are any other questions.

Thanks,

Shea E. McNease, P.E.
Project Engineer
shea@sd-w.com

Engineering Progress

301 2nd Ave. | Hattiesburg, MS 39401 | (p) 601.544.1821 | (f) 601.544.0501 | sd-w.com

---

From: John Milner [mailto:jmilner@brunini.com]
Sent: Tuesday, May 02, 2017 4:36 PM
To: Shea McNease <Shea@sd-w.com>
Cc: John Milner <jmilner@brunini.com>
Subject: Revised draft response to Valerie for your review

Valerie,

Please see the following responses to your prior action item requests and the attached deliverables that are currently available:

1. The City has asked to submit a letter to EPA and MDEQ setting forth its request and justification for a payment plan for the penalty. If City wants to pursue this, send ASAP. It would be helpful to provide as much detail as possible as to why the City feels this is necessary and the specific payment details regarding the number and timing of installments.

   The City will provide a letter by May 17 which requests the a payment plan in four equal installments in the following four months over two fiscal years:

   November, 2017
   May, 2018
   November, 2018
   May, 2019

2. The City will consider voluntarily submitting the SORP and ERP earlier than the current deadline set forth in the CD.

   The City is in the process of preparing the SORP and ERP and is definitely considering the voluntary submission of the SORP and ERP earlier than the CD deadline.

3. DOJ has proofed Appendices A, B and C and raised one suggested edit/question re boring. City owes a response.

   See the attached revised Appendices A, B and C.

4. The City will revise maps C -1 to label a portion of sewer shed 36 and will revise C-2 to label a portion of sewer shed 44.

   See attached revised maps.

5. The City will correct the typo in paragraph 11 of Appendix A.

   See attached revised Appendix A.

6. The City will remove the dates under the title pages of Appendices A, B and C.

   See attached revised Appendices A, B and C.

7. The City will send out a complete set of Appendices A, B and C once these final changes are made.

   See attached revised Appendices A, B and C.

8. The EPA will send out a markup of Appendix E for the SEP.

   The City has reviewed the April 5 markup of the Appendix E for the SEP and has no changes to propose to the markup.

9. The City will contemplate a proposal for an appropriate deadline for SEP completion and schedule for escrow account deposits.

   This is will be provided by May 17.

10. The City will send out the SSO list in an excel spreadsheet (John, Bill B could not find an email where you sent that already so please resend).

    This will be sent to you, as well as additional documents, tomorrow (May 3) after a meeting in Hattiesburg with the City team.

11. The City will submit to the EPA and MDEQ a summary of its community engagement efforts to date.

    A summary will be provided by May 10,which will consist of the following meetings:

    East Jerusalem Neighborhood association 4/14/16
    Arcadia sunset neighborhood association meeting on 4/21/16
    Parkhaven neighborhood association meeting on 6/9/16
    Grace Christian Neighborhood on 8/11/16 at 6pm
    The Avenues Neighborhood Association on 8/22/16 at 6pm
    The Cottages Neighborhood Association on 11/01/16 at 6pm
    Highland Neighborhood Association on 11/14/16 at 6 pm (Reggie was in attendance)

    Attached the power point presentation that was presented at these meetings.

12. The City will submit draft language for new Paragraph 23.k – Chronic SSO Advanced Monitoring Program to replace current Paragraph 23.a.(6) using EPA's original language as much as possible.

    The City team is meeting tomorrow and next week to address this issue and will submit proposed language for this provision by May 17.

13. The City will provide to DOJ the information for whom penalty payment instructions should be sent as set forth in Paragraph 26 of the CD.

    The City will provide these instructions by May 17.

Valerie, in addition to these action items, as I have mentioned to you and Bill earlier, the City is reviewing the Capacity Assurance Program provision of the CD, Paragraph 23.i (pp. 35 – 40) and will provide comments on issues related to this provision by May 17 after meetings tomorrow and next week.

If you have any questions concerning this message or the attachments, please feel free to contact me.

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

BRUNINI
BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201
Post Office Drawer 119, Jackson, MS 39205

www.brunini.com
Bio / V-Card

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From: John Milner
Sent: Tuesday, May 02, 2017 3:34 PM
To: 'Shea McNease'
Cc: John Milner
Subject: Draft response to Valerie for discussion

Below are action items: please follow up on those that are due from the City.

1. The City has asked to submit a letter to EPA and MDEQ setting forth its request and justification for a payment plan for the penalty. If City wants to pursue this, send ASAP. It would be helpful to provide as much detail as possible as to why the City feels this is necessary and the specific payment details regarding the number and timing of installments.

   Need to fill in the dates

2. The City will consider voluntarily submitting the SORP and ERP earlier than the current deadline set forth in the CD.

   The City is in the process of preparing the SORP and ERP and is definitely considering the voluntary submission of the SORP and ERP earlier than the CD deadline.

3. DOJ has proofed Appendices A, B and C and raised one suggested edit/question re boring. City owes a response.

   See the attached revised Appendices A, B and C.

4. The City will revise maps C -1 to label a portion of sewer shed 36 and will revise C-2 to label a portion of sewer shed 44.

   See attached revised maps.

5. The City will correct the typo in paragraph 11 of Appendix A.

   See attached revised Appendix A.

6. The City will remove the dates under the title pages of Appendices A, B and C.

   See attached revised Appendices A, B and C.

7. The City will send out a complete set of Appendices A, B and C once these final changes are made.

   See attached revised Appendices A, B and C.

8. The EPA will send out a markup of Appendix E for the SEP.

   Shea, where do we stand on this?

9. The City will contemplate a proposal for an appropriate deadline for SEP completion and schedule for escrow account deposits.

   This is will be provided by May 10.

10. The City will send out the SSO list in an excel spreadsheet (John, Bill B could not find an email where you sent that already so please resend).

    Shea, have you sent this to me?

11. The City will submit to the EPA and MDEQ a summary of its community engagement efforts to date.

    A summary will be provided by May 10,which will consist of the following meetings:

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Parkhaven neighborhood association meeting on 6/9/16
Grace Christian Neighborhood on 8/11/16 at 6pm
The Avenues Neighborhood Association on 8/22/16 at 6pm
The Cottages Neighborhood Association on 11/01/16 at 6pm
Highland Neighborhood Association on 11/14/16 at 6 pm (Reggie was in attendance)

Attached the power point presentation that was presented at these meetings.

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    The City team is meeting tomorrow and next week to address this issue and will submit proposed language for this provision by May 17.

13. The City will provide to DOJ the information for whom penalty payment instructions should be sent as set forth in Paragraph 26 of the CD.

    We will provide these instructions by May 10.

Valerie, in addition to these issues, as I have mentioned, the City is reviewing the Capacity Assurance Program provision of the CD, Paragraph 23.i (pp. 35 – 40) and will provide comments on issues related to this provision by May 17.

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

Message

From: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
Sent: 7/9/2019 4:02:58 PM
To: Rae, Sarah [Rae.Sarah@epa.gov]; Armor, Suzanne [Armor.Suzanne@epa.gov]
CC: Ghosh, Mita [Ghosh.Mita@epa.gov]; Bush, William [Bush.William@epa.gov]
Subject: RE: Hattiesburg, MS

Thanks for the update.
AAG is coming our new building for a town hall next Tues.

From: Rae, Sarah <Rae.Sarah@epa.gov>
Sent: Tuesday, July 9, 2019 12:00 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>; Bush, William <Bush.William@epa.gov>
Subject: Hattiesburg, MS

Suzanne and Valerie,

Ex. 5 Deliberative Process (DP)

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

It is important to think beyond yourself.

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Message

From: Fentress, Robert [Fentress.Robert@epa.gov]
Sent: 3/23/2017 8:23:26 PM
To: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
CC: Bush, William [Bush.William@epa.gov]
Subject: RE: Hattiesburg/ current internal CD draft
Attachments: Hattiesburg CD with BF tweak to Paragraph 29 ENV_ENFORCEMENT-#2597378-v11-Hattiesburg__Mar___2017_CD__FRE_408_MATERIAL.doc

Ex. 5 AC/AWP/DP

Robert D. Fentress
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-7023
fentress.robert@epa.gov

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From: Mann, Valerie (ENRD) [mailto:Valerie.Mann@usdoj.gov]
Sent: Wednesday, March 22, 2017 4:47 PM
To: Fentress, Robert <Fentress.Robert@epa.gov>
Subject: Hattiesburg/ current internal CD draft

Ex. 5 AC/AWP/DP

Message

From: Bush, William [Bush.William@epa.gov]
Sent: 1/27/2017 10:19:29 PM
To: Gene Wasson [gwasson@brunini.com]
CC: jmilner@brunini.com; Bush, William [Bush.William@epa.gov]
Subject: RE: Hattiesburg

Here is the applicable penalty policy. You'll only need to pay to attention to pages 18 through 20.

https://www.epa.gov/sites/production/files/documents/cwapol.pdf

And here is the updated SEP Policy.

https://www.epa.gov/sites/production/files/2015-04/documents/sepupdatedpolicy15.pdf

---

From: Gene Wasson [mailto:gwasson@brunini.com]
Sent: Friday, January 27, 2017 4:44 PM
To: Bush, William <Bush.William@epa.gov>
Cc: jmilner@brunini.com
Subject: Hattiesburg

Bill,

I understand that there are two EPA penalty guidance documents which you have advised would be helpful to have available for reference during our call next week.

Are those two guidance documents the following?

1. Interim CWA Settlement Penalty Policy (March 1, 1995)
2. CWA Municipal Settlements and SEPS (November 4, 2005)

If not, would you please specify the guidance documents to which you were referring?

Thanks,

Gene Wasson

Gene Wasson
E: gwasson@brunini.com
P: 601-960-6897 F: 601-960-6902

The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201
Post Office Drawer 119, Jackson, MS 39205

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Message

From: John Milner [jmilner@brunini.com]
Sent: 2/8/2017 10:41:27 PM
To: Bush, William [Bush.William@epa.gov]
CC: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]; Fentress, Robert [Fentress.Robert@epa.gov]; Elliott, Richard [Elliott.Richard@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]; Horsey, Maurice [Horsey.Maurice@epa.gov]; Gretchen Zmitrovich [GZMITROVICH@mdeq.ms.gov]
Subject: Re: Hattiesburg - Action Item List from 2/7/17 Meeting

Thanks Bill. I'll look at this list this evening and give you a call tomorrow morning if I have any comments or questions. I appreciate you getting this out. We will move forward with the City's to-do's expeditiously.

John

Sent from my iPhone

On Feb 8, 2017, at 3:55 PM, Bush, William <Bush.William@epa.gov<mailto:Bush.William@epa.gov>> wrote:

Here are our action items. Let me know I missed something or got something wrong. Thanks.

1. The City will be submitting a letter to EPA and MDEQ setting forth its request and justification for a payment plan for the penalty. It would be helpful to provide as much detail as possible as to why the City feels this is necessary and the specific payment details regarding the number and timing of installments.

As we discussed at the meeting, please keep in mind the following timeline when setting forth your proposal for a payment schedule. The CD as currently drafted requires the penalty to be paid 30 days after Entry of the CD by the Court. So even if we finalize all of the terms of the CD within the next month, the CD would likely not be lodged any earlier than the first of May as it has to go through all of our respective approval processes. Once the CD is lodged, a 30 day public comment period will be initiated so that would take us to at least to the first of June when the comment period expires. Assuming there were no comments that would warrant the United States to change the CD, the United States would then prepare and file a motion to enter the CD that will include a responsiveness summary to any comments that are received. The earliest that this would likely occur is the first of July. At this point, the Court could immediately act to enter the CD or sit on it for a while - you never know. Assuming the Court acts quickly, the earliest the CD would likely be entered is sometime in July. Thus the earliest time the City would be required to pay the penalty based on the current wording of the CD would be sometime in August. I mention all of this because if the City can make all or a portion of the penalty payment within this earliest timeframe of August, then there may not be a need for a payment schedule or one that is very drawn out. John, call me if you need me to explain this further.

2. The City will consider voluntarily submitting the SORP and ERP earlier than the current deadline set forth in the CD.

3. DOJ will proof Appendices A, B and C to confirm her suggested edits were made and will let John know.

4. The City will revise maps C -1 to label a portion of sewershed 36 and will revise C-2 to label a portion of sewershed 44.

5. The City will correct the typo in paragraph 11 of Appendix A.

6. The City will remove the dates under the title pages of Appendices A, B and C.
7. The City will send out a complete set of Appendices A, B and C once these final changes are made.

8. The EPA/DOJ will draft and send out draft language for the SEP Section of the CD and stipulated penalties for failure to perform the SEP.
(Valerie, give me a call at your convenience to discuss).

9. The EPA will send out a markup of Appendix E for the SEP.

10. The City will contemplate a proposal for an appropriate deadline for SEP completion and schedule for escrow account deposits.

11. The City will send out the SSO list in an excel spreadsheet (John, I could not find an email where you sent that to me already so please resend).

12. The City will submit to the EPA and MDEQ a summary of its community engagement efforts to date.

13. The City will submit draft language for new Paragraph 23.k – Chronic SSO Advanced Monitoring Program to replace current Paragraph 23.a.(6) using EPA's original language as much as possible.

14. The City will provide to DOJ the information for whom penalty payment instructions should be sent as set forth in Paragraph 26 of the CD.

15. DOJ will get out a revised draft of the CD based on the matters discussed at the meeting:
- accepting all previous edits
- add Whereas clause re failure to report
- add approximately 900 SSOs as estimate of past SSOs
- add reference to 3rd Amended State Order dated Dec 7, 2016
- delete Paragraph 23.a.(6) and insert placeholder for new Paragraph 23.k.

John E. Milner
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P: 601-960-6842 F: 601-960-6902

[http://www.brunini.com/wp-content/uploads/2016/06/BGGH-FullLogo.gif]

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED STATES OF AMERICA and The STATE OF MISSISSIPPI, Plaintiffs, v. The CITY OF HATTIESBURG, MISSISSIPPI, Defendant.	)))))))))))	Case No. CONSENT DECREE

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[TOC \O "1-3"]

I. INTRODUCTION

A. WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (the "EPA"), has filed a complaint concurrently with this Consent Decree, alleging that Defendant, the City of Hattiesburg, Mississippi (the "City"), has violated and continues to violate Section 301 of the Clean Water Act ("CWA"), 33 U.S.C. § 1311, and terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") permits issued under Section 402 of the CWA, 33 U.S.C. § 1342; and seeking injunctive relief and civil penalties pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d);

B. WHEREAS, Plaintiff the State of Mississippi, acting through the Mississippi Commission on Environmental Quality and the Mississippi Department of Environmental Quality ("MDEQ") (collectively, the "State"), joined in the Complaint and seeks injunctive relief and civil penalties for the City's alleged violations of the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1, *et seq.* ("MAWPCL");

C. WHEREAS, the State is also a Plaintiff in this action and is joined as a party under Section 309(e) of the CWA, 33 U.S.C. § 1319(e), which requires the state in which a municipality is located to be joined as a party whenever the municipality is a party to a civil action brought by the United States under Section 309 of the CWA;

D. WHEREAS, the State has been authorized by the EPA to administer the NPDES program in Mississippi pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b);

E. WHEREAS, the City is a "municipality" pursuant to Section 502 of the CWA, 33 U.S.C. § 1362;

F. WHEREAS, the City's Wastewater Collection and Transmission System ("WCTS") transports wastewater to the City's two wastewater treatment plants, the Hattiesburg South Wastewater Treatment Plant ("South Lagoon") and the Hattiesburg North Wastewater Treatment Plant ("North Lagoon");

G. WHEREAS, the South Lagoon and its related WCTS are regulated pursuant to NPDES Permit number MS0020303, and the North Lagoon and its related WCTS are regulated pursuant to NPDES Permit number MS0020826;

H. WHEREAS, the Mississippi Commission on Environmental Quality and the City have entered into Agreed Order No. 6034 11, dated October 5, 2011, as amended on February 13, 2012, August 12, 2014, and December 7, 2016, regarding the compliance issue of wastewater discharges from the South Lagoon and the North Lagoon under the NPDES Permits referenced in Paragraph G above;

I. WHEREAS, the EPA and the State have determined, based upon information provided

by the City, that the City has had hundreds of unauthorized Sanitary Sewer Overflows ("SSOs") since January 1, 2012;

J. WHEREAS, the City represents that based on previous investigations, including those conducted pursuant to the City's Comprehensive Sewer and Water Investment Project ("COMSWIP"), the City identified and completed within the past several years certain sanitary sewer projects costing approximately $16.9515.5 million including several projects to address conditions that caused SSOs in the WCTS. Such completed sanitary sewer projects are more particularly described and depicted on a map as set forth on Appendix A, attached hereto and incorporated herein;

K. WHEREAS the EPA and the State have determined that the City has no effective system of SSO reporting or record-keeping, and has thus failed to comply with the reporting requirements of its NPDES Permits;

L. WHEREAS, the United States and the State contend that these SSOs and reporting failures are violations of the CWA, MAWPCL, and the City's NPDES Permits;

M. WHEREAS, the City does not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint;

N. 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 between the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section [REF _Ref322450365 \r \h * MERGEFORMAT]I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. This Court has supplemental jurisdiction over the state law claims asserted by the State pursuant to 28 U.S.C. § 1367. 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) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and the City conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, the City consents to the Court's jurisdiction over this Decree, over any such action, and over the City and consents to venue in this judicial district.

2. For purposes of this Consent Decree, the City agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), and Miss. Code Ann. § 49-17-29 and § 49-17-43.

III. **APPLICABILITY**

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

4. No transfer of ownership or operation of any portion of the Sewer System, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of the Decree are implemented. At least thirty (30) Days prior to such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States and MDEQ, in accordance with Section [REF _Ref322450400 \r \h * MERGEFORMAT] (Notices). Any attempt to transfer ownership or operation of the Sewer System without complying with this Paragraph constitutes a violation of this Decree.

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

6. In any action to enforce this Consent Decree, the City 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.

IV. **OBJECTIVES**

7. All plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing the City to achieve and maintain full compliance with the CWA and the MAWPCL, including the goal of eliminating all Sanitary Sewer Overflows.

V. **DEFINITIONS**

8. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA (including, without limitation, those terms defined in Section 502 of the CWA, 33 U.S.C § 1362, and at 40 C.F.R. § 122.2) shall have the meanings assigned to

them in the CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Building Backup" shall mean a wastewater release or backup into a building that is caused by blockages, flow conditions, or other malfunctions in the Wastewater Collection and Transmission System. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a portion of a Private Lateral located on private property outside of the City's right-of-way or easement is not a Building Backup.

b. "Calendar Quarter" shall mean the three (3)-month periods ending on March 31, June 30, September 30, and December 31.

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

d. "Certification" or "certify" when used in this Consent Decree shall require the City to comply with Paragraph [REF _Ref387046011 \w \h] of this Consent Decree.

e. "The City" or "Defendant" shall mean the City of Hattiesburg, Mississippi, a municipal corporation, including all of its departments, agencies, instrumentalities such as the Water and Sewer Department, and any successor thereto.

f. "CMOM" or "Capacity, Management, Operations, and Maintenance" shall mean a program of accepted industry practices to properly manage, operate and maintain sanitary wastewater collection, transmission and treatment systems, investigate capacity-constrained areas of these systems, and respond to SSO events.

g. "Complaint" shall mean the complaint filed by the United States and the State in this action.

h. "COMSWIP" shall mean the City's Comprehensive Sewer and Water Investment Project.

i. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section [REF _Ref322450534 \r \h * MERGEFORMAT]). In the event of a conflict between this document and any appendix, this document shall control.

j. "CWA" shall mean the Clean Water Act, as amended, 33 U.S.C. §§ 1251, *et seq.*

k. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Southern District of Mississippi.

l. "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.

m. "Deliverable" shall mean any written document required to be prepared and/or submitted by or on behalf of the City pursuant to this Consent Decree.

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

o. "Effective Date" shall have the definition provided in Section [REF _Ref322450432 \r \h * MERGEFORMAT].

p. "Excessive ~~Inflow~~Infiltration/Inflow" or "Excessive I/I" shall have the meaning provided in 40 C.F.R. § 35.2005(b)(16).

q. "Force Main" shall mean any pipe which is owned or operated by the City 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 Line" or "Gravity Sewer" shall mean any pipe which is owned and operated by the City that receives, contains and conveys wastewater not normally under pressure, but is 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.

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 waters, surface runoff, street wash waters, or drainage.

u. "I/I" shall mean the total quantity of water from ~~Inflow,~~ Infiltration, Inflow, and rainfall dependent ~~Inflow and~~ Infiltration and Inflow without distinguishing the source.

v. "MAWPCL" shall mean the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq*.

w. "Major Gravity Line" shall mean any of the following:

(1) all Gravity Sewer Lines that are twelve (12) inches in diameter or larger;

(2) all Gravity Sewer Lines that convey wastewater from one pumping station service area to another pumping station service area; and

(3) all Gravity Sewer Lines that have caused or contributed, or that the City knows will likely cause or contribute to capacity-related SSOs.

x. "Month" shall mean one (1) calendar month running from the numbered day to the same numbered day of the following calendar month, regardless of whether the particular month has 28, 29, 30 or 31 days. In the event a triggered event would occur on a day of the month which does not exist (for example, on February 30), then the event shall be due on the first day of the following month (for example, March 1).

y. "MDEQ" shall mean the Mississippi Department of Environmental Quality and the Mississippi Commission on Environmental Quality, collectively, and any successor departments or agencies of the State.

z. "NPDES" shall mean the National Pollutant Discharge Elimination System authorized under Section 402 of the CWA, 33 U.S.C. § 1342.

aa. "NPDES Permits" shall mean NPDES permit No. MS0020303 issued to the City pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the South Lagoon, and NPDES permit No. MS0020826 issued to the City pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the North Lagoon, and any future extended, modified, or reissued permits.

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

cc. "Parties" shall mean the United States of America on behalf of the EPA, the State acting through MDEQ, and the City.

dd. "Plaintiffs" shall mean the United States of America on behalf of the EPA, and the State acting through MDEQ.

ee. "Private Lateral" shall mean that portion of a sanitary sewer conveyance pipe that extends from the wastewater main to the single-family, multi-family, apartment, or other dwelling unit or commercial or industrial structure to which wastewater service is or has been provided.

ff. "Prohibited Bypass" shall mean the intentional diversion of waste streams from any portion of a treatment facility which is prohibited pursuant to the terms set forth

at 40 C.F.R. § 122.41(m).

gg. "Public Document Repository" or "PDR" shall mean the Office of the City Clerk located at Hattiesburg City Hall, 200 Forrest Street, Hattiesburg, Mississippi, 39401 and the City's website, www.hattiesburgms.com.

hh. "Pump Station" shall mean facilities which are owned or operated by the City 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 pump station.

ii. "Sanitary Sewer Overflow" or "SSO" shall mean any discharge of wastewater to waters of the United States or the State from the City's Sewer System through a point source not specified in any NPDES permit, as well as any overflow, spill, or release of wastewater to public or private property from the Sewer System that may not have reached waters of the United States or the State, including all Building Backups.

jj. "SCADA" shall mean supervisory control and data acquisition.

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

ll. "Sewershed" shall mean the subdivisions of the City's WCTS containing sewers that are primarily hydraulically linked.

mm. "Sewer System" shall mean the WCTS and the WWTPs.

nn. "State" shall mean the State of Mississippi, including all of its departments, agencies, and instrumentalities.

oo. "Timely" when applied to the submittal of a Deliverable shall mean submitted no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and containing all of the elements pertaining to the submittal as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree). "Timely" when applied to the implementation of any Work shall mean implemented no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and in accordance with the elements pertaining to such Work as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree).

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

qq. "Wastewater Collection and Transmission System" or "WCTS" shall mean the municipal wastewater collection, retention and transmission system, including

all pipes, Force Mains, Gravity Sewer Lines, Pump Stations, pumps, manholes, and appurtenances thereto, which are owned or operated by the City.

rr. "Wastewater Treatment Plants" or "WWTPs" 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 include all facilities owned, managed, operated, and maintained by the City, including but not limited to the South Lagoon and the North Lagoon, and all components of such sewage treatment plants.

ss. "Work" shall mean all activities the City is required to perform under this Consent Decree.

VI. REVIEW OF DELIVERABLES/CERTIFICATION OF DELIVERABLES

9. Public Document Repository/ Public Review Requirement. The City shall post on its website instructions for how the public can request email notices of future Deliverables. Prior to the submission of each Deliverable to the EPA and MDEQ, the City shall post a copy of the Deliverable in its PDR and provide notice of such action by email to all parties who have requested such notice. The City shall also send to the PDR, prior to the submission of each Deliverable to the EPA and MDEQ, a memorandum containing a brief synopsis of the Deliverable and instructions on how to find the Deliverable on the City's website. The City shall post on its website instructions for submitting comments, and shall allow the public a period of thirty (30) Days to comment on, the following Deliverables: (i) the Priority Areas Evaluation Report/Rehabilitation Plan required under Paragraph 21; (ii) the Sewer Overflow Response Plan required under Paragraph 23.a.; (iii) the Emergency Response Plan required under Paragraph 23.b.; the Fats, Oils and Grease Control Program required under Paragraph 23.h.; and the Capacity Assurance Program required under Paragraph 23.i. After the thirty (30)-Day comment period, the City shall consider public comments for a period of at least fifteen (15) Days before submitting the Deliverable to the EPA and MDEQ. Within seven (7) Days after submitting a Deliverable to the EPA and MDEQ, the City shall place a copy of the submitted version of the Deliverable in its PDR. Within seven (7) Days after the EPA's approval, approval contingent upon conditions, or modification by the EPA, the City shall place a copy of such final version of the Deliverable in its PDR. The City shall maintain in its PDR until termination of this Consent Decree all written comments received from the EPA and MDEQ along with all submitted versions of Deliverables.

10. Copy to MDEQ. The City shall provide a copy of any Deliverable to MDEQ at the same time such Deliverable is due to the EPA.

11. EPA Action on Deliverables. After review of any Deliverable that is required to be submitted pursuant to this Consent Decree, the EPA, after consultation with MDEQ, shall in writing:

a. approve the submission;

b. approve the submission upon specified conditions;

c. approve part of the submission and disapprove the remainder; or

d. disapprove the submission.

12. Approved Deliverables. If a Deliverable is approved by the EPA pursuant to Paragraph [REF _Ref383526396 \r \h * MERGEFORMAT], the City shall take all actions required by the Deliverable in accordance with the schedules and requirements of the Deliverable as approved. If the Deliverable is conditionally approved or approved only in part, pursuant to Paragraph [REF _Ref383526325 \r \h * MERGEFORMAT] or [REF _Ref383524967 \r \h * MERGEFORMAT], the City shall, upon written direction from the EPA, after consultation with MDEQ, take all actions required by the approved plan, report, or other item that the EPA, after consultation with MDEQ, determines are technically severable from any disapproved portions, subject to the City's right to dispute only the specified conditions or the disapproved portions, under Section [REF _Ref442169774 \w \h] of this Consent Decree (Dispute Resolution). Following the EPA approval of any Deliverable or portion thereof, such Deliverable or portion thereof so approved shall be incorporated into and become enforceable under this Consent Decree.

13. Disapproved Deliverables. If the submission is disapproved in whole or in part pursuant to Paragraph [REF _Ref383524967 \r \h * MERGEFORMAT] or [REF _Ref383524994 \r \h * MERGEFORMAT], the City shall, within thirty (30) Days or such other time as the EPA and the City agree to in writing, correct all deficiencies and resubmit to the EPA the Deliverable, or disapproved portion thereof, for approval, in accordance with Paragraphs [REF _Ref383525115 \r \h * MERGEFORMAT] and [REF _Ref383525135 \r \h * MERGEFORMAT]. If the resubmission is approved in whole or in part, the City shall proceed in accordance with Paragraph [REF _Ref383525135 \r \h * MERGEFORMAT].

14. Stipulated Penalties Accruing. Any stipulated penalties applicable to the original Deliverable, as provided in Section [REF _Ref442169823 \w \h] of this Decree, shall accrue during the thirty (30)-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the City's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

15. Resubmitted Deliverable. If a resubmitted Deliverable, or portion thereof, is disapproved in whole or in part, the EPA, after consultation with MDEQ, may again require the City to correct any deficiencies, in accordance with preceding Paragraph [REF _Ref383526531 \r \h * MERGEFORMAT], or may itself correct any deficiencies, subject to the City's right to invoke Dispute Resolution and the right of the EPA to seek stipulated penalties as provided in

preceding Paragraph [REF _Ref383526273 \r \h * MERGEFORMAT]. Upon the EPA's correction of any deficiencies, such resubmitted plan, report, or other item, or portion thereof will be incorporated into and become enforceable under this Consent Decree and shall be implemented by the City according to the approved schedule, subject to the City's right to invoke Dispute Resolution pursuant to Section [REF _Ref383525264 \r \h * MERGEFORMAT].

16. Timing of Review of Deliverables. If the EPA issues written comments and decisions on any Deliverable more than ninety (90) Days after receipt of such submission, any subsequent deadline or milestone that is dependent upon such comments or decisions shall be extended. The length of the extension shall be determined by calculating the number of Days between the EPA's receipt of the submission and the date of the EPA's written response, less ninety (90) Days. Within thirty (30) Days of the date that the City knows or should know of a deadline or milestone that the City believes is extended under this Paragraph, the City shall inform the EPA, in writing, of its belief and the amount of time the City believes the deadlines or milestones are extended. If the EPA disagrees with the City's determination that a deadline is dependent upon such comments or decisions, the EPA shall inform the City in writing. The City may dispute the EPA's conclusion regarding whether a deadline is dependent upon such comments or decisions pursuant to Section [REF _Ref387667850 \w \h] of this Consent Decree (Dispute Resolution).

17. Certification. In all Deliverables, notices, documents or reports submitted to the United States and State pursuant to this Consent Decree, the City shall, by a senior City management official, sign and certify such notices, documents and reports as follows:

> *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

VII. **COMPLIANCE REQUIREMENTS**

18. Obligation to Perform Work. No later than the Effective Date, the City shall begin to implement the Work pursuant to this Consent Decree. All Work identified in this Section [REF _Ref442169872 \w \h] shall be completed no later than one hundred ninety-six (196) ~~m~~Months after the Effective Date. All Work shall be performed using sound engineering practices to ensure that construction, management, operation and maintenance of the Sewer System complies with the CWA, including practices to improve the resilience of the Sewer System to the impacts of climate change. Sound engineering practices may include, but are not limited to, appropriate provisions of the *Handbook: Sewer System Infrastructure Analysis and*

Rehabilitation, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 2010; EPA's guidance: *Computer Tools for Sanitary Sewer System Capacity Analysis and Planning*, EPA/600/R-07/111, October 2007; the most current edition of MDEQ's *Guidance for the Design of Publicly Owned Wastewater Facilities*; EPA's *Climate Ready Water Utilities (CRWU) Initiative*, referenced at EPA 817-F-12-005, 2012; and EPA's *Climate Resilience Evaluation and Awareness Tool Version 3.0* (CREAT 3.0), referenced at EPA 815-B-16-004, May 2016 and currently at [HYPERLINK "https://www.epa.gov/crwu/build-climate-resilience-your-utility"]; and the Pump Stations evaluations shall be consistent with the *Pumping Systems* chapter of the most current version of Water Environment Federation's *Manual of Practice FD-4, Design of Wastewater and Stormwater Pumping Stations.*

19. Early Action Projects. Based on previous investigations conducted pursuant to the City's COMSWIP, the City has identified certain rehabilitation and other projects that are intended to address conditions currently causing SSOs in the WCTS and other violations alleged in the Complaint which shall be referred to as "Early Action Projects." The Early Action Projects are set forth and described on Appendix B, attached hereto and incorporated herein. The City represents that the Early Action Projects will constitute approximately three percent (3%) of the WCTS by linear foot, will contribute to the improvement of 15 SSOs, and are estimated to cost approximately $5.2 million. The City shall complete each of these Early Action Projects in accordance with the deadlines set forth in Appendix B which do not extend past December 31, 2020. Any change to this list of projects or deadlines approved by the EPA shall not constitute a material modification to this Consent Decree as set forth in Section [REF _Ref386810247 \w \h * MERGEFORMAT] (Modifications) below.

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20. Sanitary Sewer Evaluation/Rehabilitation ("SSER") Work Plan. Within nine (9) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a SSER Work Plan that provides for the continual assessment, analysis, and rehabilitation of the WCTS infrastructure to, among other things, address I/I, structural defects, and the other conditions causing, or that are likely to cause, SSOs. The SSER Work Plan shall establish procedures for setting priorities and expeditious schedules for undertaking the WCTS assessment and rehabilitation components set forth in Paragraphs [REF _Ref387045135 \w \h * MERGEFORMAT] through [REF _Ref387045172 \w \h * MERGEFORMAT], below. The City shall develop these priorities and expeditious schedules taking into consideration the nature and extent of customer complaints; flow monitoring, including flow isolation studies; location and cause of SSOs; any remedial measures already undertaken; field crew work orders; any preliminary sewer assessments; locations closer to the Leaf and Bouie Rivers; and any other relevant information. In addition, areas near surface waters that have been included on MDEQ's CWA Section 303(d) list of impaired waters for pathogens shall also receive priority by the City. Finally, the City shall also consider areas that have been identified by the EPA as potentially having environmental justice issues (minority and/or low income neighborhoods) when developing the priorities. The SSER Work Plan shall also include performance goals for each of the components of the SSER Work Plan set forth below, and procedures for analysis of the

effectiveness of completed rehabilitation. The SSER Work Plan shall include the following components:

a. Corrosion Defect Identification. The Corrosion Defect Identification component of the SSER Work Plan shall establish standard procedures for inspecting and identifying WCTS infrastructure that is either corroded or at risk of corrosion. The Corrosion Defect Identification component shall include a system for prioritizing repair of existing corrosion defects, corrosion identification forms, and procedures for a corrosion defect analysis.

b. Manhole Condition Assessment and Rehabilitation. The Manhole Condition Assessment and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the condition assessment of manholes within the WCTS. This component shall include manhole inspection forms and procedures for a manhole defect analysis. This component shall also establish a process for setting manhole rehabilitation priorities and expeditious schedules; shall establish an ongoing inventory of manhole rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

c. Flow Monitoring. The Flow Monitoring component of the SSER Work Plan shall establish procedures for initiating routine flow monitoring during dry and wet weather to support engineering analyses related to Sewer System capacity and peak flow studies. Dry weather monitoring shall be carried out so as to allow the characterization of base flows and I/I rates within the WCTS. Wet weather monitoring shall be conducted periodically during events of sufficient duration and intensity that cause significant I/I into the WCTS. The procedures shall identify the process used to establish flow monitoring locations, appropriate flow monitoring techniques, sewer cleaning associated with flow monitoring and a procedure for rainfall measurement.

d. Capacity Assessment. The Capacity Assessment component of the SSER Work Plan shall establish procedures and methodologies for assessing the wet weather capacity of the WCTS. This assessment shall include engineering analyses of the WCTS capacity derived from, but not limited to, flow monitoring data, remote monitoring equipment installed in the WCTS to monitor sewer pipe surcharge, and hydraulic modeling results where applicable. This assessment shall identify those portions of the WCTS that are expected to cause or contribute to SSOs under existing and projected average and peak flows in dry and wet weather, and the degree to which those portions of the WCTS experience or cause SSOs under current or projected future conditions.

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e. Closed Circuit Television ("CCTV") Inspection. The CCTV inspection component of the SSER Work Plan shall establish standard procedures for CCTV inspection within the WCTS to support sewer assessment and rehabilitation activities, and shall include procedures for CCTV cleaning and a process for the retention and

retrieval of CCTV inspection data.

f. Gravity Sewer Line Defect Analysis and Rehabilitation. The Gravity Sewer Line Defect Analysis component of the SSER Work Plan shall establish standard procedures for analysis of Gravity Sewer Line defects within the WCTS which may vary depending on the size of the pipe. Such procedures shall include Private Lateral investigations to identify sources of I/I to the WCTS. The Gravity Sewer Line Defect Analysis component shall establish standard defect codes, defect identification procedures and guidelines, and a standardized process for cataloging Gravity Sewer Line defects. This component shall also establish a process for setting Gravity Sewer Line rehabilitation priorities; shall establish an ongoing inventory of Gravity Sewer Line rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

g. Smoke Testing. The Smoke Testing component of the SSER Work Plan shall establish standard procedures for smoke testing of the Gravity Sewer Lines within the WCTS to identify sources of I/I, including cross connections and other unauthorized connections. Such procedures shall include Private Lateral investigations to identify sources of I/I.

h. Force Main Condition Assessment and Rehabilitation. The Force Main Condition Assessment and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the condition assessment of Force Mains within the WCTS. This component shall include inspection forms and procedures for a Force Main defect analysis. This component shall also establish a process for setting Force Main rehabilitation priorities; shall establish an ongoing inventory of Force Main rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

i. Pump Station Performance and Rehabilitation. The Pump Station Performance and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the evaluation of Pump Station performance and Pump Station adequacy within the WCTS. The Pump Station Performance and Rehabilitation component shall include:

(1) The use of pump run time meters; pump start counters; computation of Nominal Average Pump Operating Time ("NAPOT"); root cause failure analysis protocols; and appropriate remote sensing such as SCADA;

(2) The evaluation of station capacity, as described in the *Pumping Systems* chapter of the most current version of WEF's Manual of Practice FD-4, *Design of Wastewater and Stormwater Pumping Stations*;

(3) The evaluation of critical response time, defined as the time interval between activation of the high wet well level alarm and the first (1st) SSO, under peak flow conditions;

(4) The evaluation of station conditions, based upon both physical inspection and recent operating and mechanical failure history during at least the past five (5) years;

(5) The evaluation of station design and equipment, including redundancy of pumps and electrical power supply, and other equipment installed, based upon Chapter 40, *Wastewater Pumping Stations* of the most recent edition of *Recommended Standards for Wastewater Facilities* by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (commonly known as the "Ten State Standards");

(6) The evaluation of the ability of maintenance personnel to take corrective action within the critical response time calculated for each Pump Station; and

(7) A process for setting Pump Station rehabilitation priorities and expeditious schedules and an ongoing inventory of Pump Station rehabilitation, including identification of the rehabilitation techniques to be used, and an analysis of the effectiveness of completed rehabilitation.

21. Priority Areas Evaluation Report/Rehabilitation Plan. For purposes of implementing the SSER Work Plan under this Consent Decree, the City has already prioritized certain Sewersheds within the WCTS into two (2) Priority Areas for sewer assessment and rehabilitation work pursuant to the SSER Work Plan under this Consent Decree. This prioritization was based on existing information including the location and frequency of past SSOs and the other criteria set forth in Paragraph 20 above. These two (2) "Priority Areas" are shown on the maps in Appendix C, attached hereto and incorporated herein. The Priority Areas represent approximately forty-three percent (43%) of the WCTS by linear foot. The City shall complete the assessment of Priority Area 1 pursuant to the SSER Work Plan on or before thirty-two (32) Months after the Effective Date. The City shall complete the assessment of Priority Area 2 pursuant to the SSER Work Plan on or before forty-five (45) Months after the Effective Date. Within three (3) Months after completion of the assessment of a Priority Area as set forth above pursuant to the SSER Work Plan, the City shall submit to the EPA for review and approval a Priority Area Evaluation Report/Rehabilitation Plan setting forth the results of the assessment for that Priority Area and proposed rehabilitative and corrective actions and schedules in order to meet objectives of this Consent Decree. Upon approval by the EPA, the City shall implement the remedial measures in the approved Rehabilitation Plan portion of this submittal in accordance with the schedule contained therein.

a. Priority Area Evaluation Report. The Priority Area Evaluation Report portion of this submittal shall include, at a minimum, the following:

(1) A thorough analysis of historical and current flow monitoring, inspection, rainfall and other data, including data collected during the evaluation of the Priority Area;

(2) Identification of areas with Excessive I/I, such that these conditions are causing and/or contributing to SSOs and/or Prohibited Bypasses at a WWTP;

(3) Identification of sources of I/I within the Priority Area, if identifiable, by manhole/line segment, street address, type (Infiltration or Inflow), source (e.g., "wall leakage"), and estimated flow from the source;

(4) Identification of cross-connections between the WCTS and the City's municipal separate storm sewer system;

(5) Identification and quantification of SSOs, including all potential SSOs identified pursuant to implementation of the SSER Work Plan;

(6) A summary of activities undertaken to configure the Hydraulic Model for the Priority Area and certification that the Hydraulic Model is capable of performing those functions identified in Paragraph [REF _Ref387045491 \w \h * MERGEFORMAT], below;

(7) A summary of activities undertaken to calibrate the Hydraulic Model and certification that the Hydraulic Model has been calibrated (including the performance of sensitivity analyses) and verified using actual system data (e.g., flow data) from permanent and temporary sewage flow monitoring points in the WCTS (this certification shall include a description of the methodology, data collected, and results of the Hydraulic Model calibrations and verifications);

(8) Identification of portions of the WCTS within the Priority Area in which physical degradation is causing or contributing to SSOs;

(9) Results of average and peak daily dry and wet weather flow measurements;

(10) A determination of maximum Infiltration rate during periods of

high ground water (in gpd/inch diameter-mile);

(11) A determination of maximum hourly Inflow rate during wet weather for various storm durations and intensities (in gpd/inch diameter-mile);

(12) A determination of peaking factors for the Priority Area (the ratio of measured peak flow to average dry weather flow as measured through the duration of the evaluation);

(13) A summary of flow monitoring activities, to include, at a minimum, a map showing the location and type of each flow meter, problems encountered and deviations from the SSER Work Plan, and a description of flow monitor calibration activities, including any scatter graphs and calibration and verification graphs;

(14) A summary of field investigative activities performed to include, at a minimum: type of activity; number of activities performed (e.g., "100 out of 500 manholes inspected"), observations made under each activity (inspection procedure), and summaries of the results;

(15) A summary of the structural defects identified in the WCTS in the Priority Area to include, at a minimum: number of each type of defect by line segment, manhole number or street address, and estimates of peak flow or impact on WCTS capacity (as appropriate) from defects in each line segment, based on a consistently applied set of stated criteria as set forth in the SSER Work Plan;

(16) A summary of the technical approach utilized in carrying out the capacity assessment analyses outlined in Paragraph [REF _Ref479061436 \w \h] above;

(17) A detailed description of any deviations from the capacity assessment outlined in Paragraph [REF _Ref479061436 \w \h] above, including a discussion of the reasons for such deviation;

(18) Identification of all portions of the WCTS within the Priority Area with insufficient capacity (pursuant to Paragraph [REF _Ref479061436 \w \h] above and as identified by the Hydraulic Model of a Major Gravity Line, Pump Station or other structure) to convey peak flows without experiencing surcharge sufficient to cause a SSO under either projected peak flows or projected average

conditions or both;

(19) A description of future projected flows;

(20) Information on the predicted (e.g. Manning equation) and actual peak flow capacity of all Major Gravity Lines (by segment), all Force Mains, siphons, and Pump Stations;

(21) Summaries of the number and footage of sewer segments surcharged, and the number of structures at which a SSO might be expected to occur under each condition investigated;

(22) Mapping for each condition investigated, illustrating each pipe segment operating in surcharge, and each manhole or structure at which a SSO might be expected to occur;

(23) Information regarding the Pump Station evaluation as required by Paragraph [REF _Ref387045172 \w \h * MERGEFORMAT] above;

(24) The results of the capacity assessment as required by Paragraph [REF _Ref479061436 \w \h] above; and

(25) A summary of any capital projects implemented since commencement of the SSER Work Plan.

b. Rehabilitation Plan. The Rehabilitation Plan portion of this submittal shall include, at a minimum, the following:

(1) Identification of specific measures and schedules that, when implemented, will result in adequate capacity in the WCTS within the Priority Area to collect, convey and treat anticipated peak flows, without SSOs or Prohibited Bypasses at a WWTP;

(2) Identification of the degree to which sources of Excessive I/I shall be removed, and the degree to which Excessive I/I removal is expected to alleviate capacity constraints, and propose specific remedial measures and schedules that will address those capacity limitations not expected to be addressed by Excessive I/I removal (anticipated I/I removal rates used in the development of the Rehabilitation Plan shall reflect current industry practice);

(3) Identification of specific remedial measures and schedules to address capacity limitations that may also include increases in Pump Station and sewer line capacity, construction of storage or

equalization basin facilities, or increases in WWTP capacity;

(4) Identification of all measures and schedules necessary to eliminate all cross-connections between the WCTS and the City's municipal separate storm sewer system;

(5) Identification of all measures and schedules necessary to eliminate all SSOs caused by physical degradation of sewers, inadequate Pump Station capacities, or inadequate Pump Station reliability;

(6) Prioritized schedules for remedial measures based upon likely relative human health and environmental impact risks, SSO frequencies, and SSO volumes;

(7) A description of the methodology used to apply the prioritization factors in Paragraph [REF _Ref387217846 \w \h * MERGEFORMAT] above;

(8) Estimated capital, operations and maintenance, and present value costs for each identified remedial measure in consistent, year-specific dollars;

(9) Identification of the dates for preliminary design, complete design, complete permitting, contract award, construction commencement, and construction completion dates for each measure proposed; and

(10) An expeditious schedule such that design, construction, and placement in service of all proposed measures shall be completed within one hundred fifty-six (156) Months after the Effective Date of this Consent Decree for Priority Area 1; and within one hundred ninety-two (192) Months after the Effective Date of this Consent Decree for Priority Area 2.

22. Priority Areas Rehabilitation Report. Within four (4) Months after completion of all remedial measures set forth in a Rehabilitation Plan for a particular Priority Area, the City shall submit to the EPA for review and approval a Rehabilitation Report summarizing the implementation of the Rehabilitation Plan. Such summary shall include, at a minimum, the following:

a. Identification of specific measures taken to achieve, and an analysis of whether such measures resulted in, adequate capacity in the WCTS within the Priority Area to collect and convey and treat anticipated peak flows, without SSOs or Prohibited Bypasses at a WWTP;

b. An analysis of the degree to which sources of Excessive I/I were removed,

and the degree to which Excessive I/I removal alleviated capacity constraints; and

c. Identification of all measures taken to eliminate, and an analysis of whether such measures resulted in the elimination of, all cross-connections and SSOs caused by physical degradation of sewers, inadequate Pump Station capacities, or inadequate Pump Station reliability.

23. Capacity, Management, Operations and Maintenance Programs. The City shall develop and implement the Capacity, Management, Operations and Maintenance ("CMOM") programs as provided below. All CMOM programs shall be developed in accordance with EPA Region 4 CMOM guidance, attached hereto and incorporated herein as Appendix D. The City shall ensure that each CMOM program has a written, defined purpose; a written, defined goal; is documented in writing with specific detail; is implemented by trained personnel; has established performance measures; and has written procedures for periodic review. The Parties recognize that the City may need or want to revise the CMOM Programs set forth below during the term of this Consent Decree. Such revisions shall not be considered modifications to the Consent Decree for purposes of Section [REF _Ref387059130 \w \h * MERGEFORMAT] (Modification). The City must obtain the EPA's prior written approval of any revision to the substance of any CMOM Program required by this Consent Decree and shall place copies of any such revised Program in the PDR in accordance with the provisions of Section [REF _Ref387059293 \w \h * MERGEFORMAT]. The City may make non-substantive changes to any CMOM Program required by this Consent Decree without the EPA's approval and shall provide a copy of any revised Program to the EPA and MDEQ, and place a copy of any such revised Program in the PDR within seven (7) Days after making such revision.

a. Sewer Overflow Response Plan ("SORP"). Within twelve (12) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a SORP that will establish timely and effective methods and means of responding to, cleaning up, and/or minimizing the impact of SSOs; timely reporting of the location, volume, cause, impact, and other pertinent SSO information to the appropriate regulatory agencies; and timely and effective notification of SSOs to potentially impacted public. At minimum, the SORP shall include and provide for the following:

(1) Within twenty-four (24) hours of the time the City first becomes aware of a SSO to waters of the United States or the State or of a SSO that will endanger public health or the environment, the City shall provide in an oral report to MDEQ the location of the SSO by street address or any other appropriate method (~~e.g.,~~ i.e., latitude-longitude). The oral report shall be given to MDEQ through calling (601) 961-5682.

(2) Within five (5) days of the time the City first becomes aware of a SSO to waters of the United States or the State or of a SSO that

will endanger public health or the environment, the City shall also provide a written report to MDEQ for the SSO. The City shall maintain a copy of any written reports prepared pursuant to this Paragraph for a period of not less than five (5) years from the date of the SSO. The written report shall contain the following:

(a) The location of the SSO by street address, or any other appropriate method (e.g., latitude-longitude);

(b) The estimated date and time when the SSO began and stopped, or if it is still an active SSO, the anticipated time to stop the SSO;

(c) The steps taken to respond to the SSO;

(d) The name of the receiving water, if applicable;

(e) An estimate of the volume (in gallons) of sewage spilled;

(f) A description of the WCTS component from which the SSO was released (such as manhole, crack in pipe, Pump Station wet well or constructed overflow pipe);

(g) Subject to available information, an estimate of the SSO's impact on public health and to water quality in the receiving water body;

(h) The cause or suspected cause of the SSO;

(i) The date of the last SSO at the same point;

(j) The steps taken or to be taken to reduce, prevent, or eliminate, reoccurrence of the SSO;

(k) A list of all notifications to the public and other agencies or departments; and

(l) The steps taken or to be taken to clean up any surfaces that have been in contact and/or contaminated by the SSO.

(3) Procedures for documenting and reporting SSOs based on demonstrable evidence that a SSO occurred regardless of whether City personnel directly witnessed the SSO occurring.

(4) The City shall maintain for all SSOs for a period of not less than five (5) years from the date of the SSO all records documenting the steps that have been and will be taken to prevent the SSO from recurring, including work order records associated with investigation and repair activities related to the SSO. The City shall also maintain for a period of not less than five (5) years from the date of the SSO a list and description of complaints from customers or others regarding the SSO.

(5) The SORP shall provide procedures for responding to all SSOs to minimize the environmental impact and potential human health risk of SSOs. At a minimum, such response procedures shall include:

(a) A detailed description of the actions the City will undertake to immediately provide notice to the public when appropriate (through the local news media or other means including signs or barricades to restrict access) of a SSO;

(b) A detailed description of the actions the City will undertake to provide notice to appropriate federal, state or local agencies/authorities;

(c) A detailed plan (including the development of response standard operating procedures) to minimize the volume of untreated wastewater transmitted to the portion of the WCTS impacted by the events precipitating the SSO to minimize overflow volumes;

(d) A particular description of the City's response to Building Backups, including the timeframe for responses and the measures to be taken to clean up Building Backups found to be caused by conditions in the City's Sewer System, including procedures necessary to disinfect and/or remove items potentially contaminated by Building Backups such as 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 and other appropriate measures to disinfect and/or remove items potentially contaminated by Building Backups; and a description of the City's follow-up process to ensure adequacy of cleanup;

(e) A detailed plan of the resources to be used to correct or repair the condition causing or contributing to the SSO;

(f) A detailed plan to ensure the preparedness, including response training of City employees and personnel of other affected agencies, necessary for the effective implementation of the SORP in the event of a SSO and establishing procedures and providing adequate training to response personnel for estimating SSO volumes;

(g) A list of those SSO locations within the area of the WCTS served by each Pump Station that have been recorded as overflowing more than once within the previous twelve (12) month period and/or those locations at which a SSO is likely to occur first in the event of a Pump Station failure; and

(h) Pump Station emergency bypass/pump-around strategies, and procedures.

b. Emergency Response Plan. Within twelve (12) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval an Emergency Response Plan. The Plan shall address both routine and catastrophic emergencies. Routine emergencies include such situations as overflowing manholes, line breaks, localized electrical failure and Pump Station outages. Catastrophic emergencies include floods, tornados, earthquakes or other natural events, serious chemical spills and widespread electrical failure. The Plan shall address areas of vulnerability and determine the effect of such a failure to operations, equipment and public safety and health based upon such factors as topography, weather, sewer system size, and other site specific factors. The Plan shall include standard forms. The Plan shall have the following components:

(1) The WWTP component of the Emergency Response Plan shall establish standard operating procedures for use in emergency situations, including changes in process controls.

(2) The WCTS component of the Emergency Response Plan shall establish standard operating procedures for use in emergency operations, including identification of the actions staff should take in the event of emergency situations (specific to the type of emergency that could occur); criteria for initiating and ceasing emergency operations; identification of appropriate repair equipment and sources thereof; and instructions on how to operate equipment and systems during an emergency when they are not functioning as intended but are not fully inoperable.

(3) In addition to the reporting requirements set forth in Section [REF _Ref386811409 \w \h * MERGEFORMAT] (Reporting Requirements), the City shall establish, in coordination with Public Health Authorities:

(a) Criteria to be used as the basis for immediately notifying the public and other impacted entities, such as users with a downstream water intake, of an emergency situation caused by a SSO, Prohibited Bypass, or effluent limit violation;

(b) A list identifying, by name, phone number and pager number, all the City staff who are responsible for notifying the public;

(c) A list identifying, by name and phone number, all Public Contacts, including local media outlets, who must be contacted during an emergency situation;

(d) A list identifying the City staff who are authorized to make public statements during emergency situations; and

(e) Pre-scripted news releases for various types of emergency situations.

(4) In addition to the notification requirements set forth in the NPDES Permits, and the reporting requirements set forth in Section [REF _Ref386811440 \w \h * MERGEFORMAT] (Reporting Requirements), the City shall establish, in coordination with Public Health Authorities:

(a) Criteria to be used as the basis for immediately notifying regulatory authorities, MDEQ, the City and the Public Health Authorities of any emergency situation caused by a SSO, Prohibited Bypass, or effluent limit violation;

(b) A list identifying, by name, phone number and pager number, all the City staff who are responsible for notifying the regulatory authorities;

(c) A list identifying, by name and phone number, all officials who must be contacted; and

(d) Standard reporting forms.

c. Information Management System ("IMS") Program. Within forty-eight

(48) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, an IMS Program, as more particularly described below. At a minimum, the IMS Program shall include the following:

(1) A management IMS component to provide City managers with guidance and instruction to adequately evaluate operations, maintenance, customer service, and Sewer System rehabilitation activities so that overall Sewer System performance can be determined and utility planning can be conducted. This IMS component shall utilize management reports and standard management forms.

(2) An operations IMS component to provide City managers and field supervisors with guidance to adequately track scheduled operational activities and to enhance operational performance. This IMS component shall utilize operating reports and standard operation forms used by field personnel and shall provide for field supervisor review.

(3) A maintenance IMS component to provide City managers and field supervisors with guidance to adequately track scheduled maintenance activities and to enhance maintenance performance. This IMS component shall utilize maintenance reports and standard maintenance forms used by field personnel. The system shall provide for field supervisor review.

(4) A description of what information will be fed into the system, how it will be entered and by what means it will be recorded.

(5) A description of the management reports that will be generated from the input data (i.e., work reports), including examples and periodicity for review of such reports.

(6) A description of the work reports that will be prepared and submitted, including examples and periodicity for review of such reports.

(7) Standard forms that will be used by both field personnel and management for the Program, where applicable.

(8) A detailed description of how the records will be maintained.

(9) If computer software will be utilized, a description of the software to be used with cited references for software training and

procedures for utilizing the software.

(10) Implementation of a Geographic Information Systems ("GIS") map of its entire WCTS on or before twenty-eight (28) Months after the Effective Date of this Consent Decree. Specifically, the City shall implement improvements to its current GIS as follows:

(a) An updated GIS database to include all as-builts and Active As-built Supplemental Information System ("AAS IS") forms, including new and corrected asset attribute data;

(b) Streamlining of the GIS data entry process for new assets, including electronic as-built data and necessary standards so that all new assets are added to the GIS system within ninety (90) calendar days of their activation in the field. Included shall be the development of a system to interface with the City WCTS hydraulic computer model so that the information can be efficiently exported to the WCTS hydraulic computer model;

(c) Simplification of the AAS IS process to facilitate wider usage;

(d) Development of a "flagging process" for damage investigators to note GIS inaccuracies;

(e) Provision for additional GIS training and refresher training;

(f) Use of online access to GIS maps to facilitate more widespread access to GIS resources to remote staff; and

(g) Determination via suitable as-built drawings, or GPS or traditional surveying field measurements, elevations of all manhole rim elevations and sewer inverts at connections to manholes and Pump Stations and their inclusion into GIS.

(11) Development and implementation of performance indicators to provide City managers with guidance to adequately evaluate data collected in the IMS for use in determining the condition of the Sewer System and an evaluation of the City's CMOM programs. Performance indicators shall include, without limitation, the linear footage of Gravity Sewer Line and Force Main inspections, the linear footage of Gravity Sewers cleaned, the number of manholes inspected, the number of manholes cleaned/maintained, the number

of inverted siphons inspected, the number of inverted siphons cleaned/maintained, the number of SSOs per mile of Gravity Sewer, the number of SSOs per mile of Force Main, the number of SSOs per Pump Station, per capita wastewater flow, NPDES Permit effluent compliance and such other performance indicators as the City may suggest and the EPA approves.

(12) Maintenance activity tracked by type (corrective, preventative, and emergency).

d. Sewer System Hydraulic Model. The City shall develop and maintain a calibrated hydraulic model of its Sewer System ("the Model") to establish existing hydraulic conditions and plan for future capacity needs of the Sewer System. The Model shall be developed concurrent with the sewer assessment and rehabilitation schedule for the initial assessment of the Priority Areas within the WCTS in Paragraph [REF _Ref387217918 \w \h * MERGEFORMAT] above. The model development schedule will be established based on system attribute data collected as part of the Sewer Mapping Program described in Paragraph [REF _Ref387217960 \w \h * MERGEFORMAT] below and flow and rainfall data collected as part of the flow monitoring program described in Paragraph [REF _Ref387217984 \w \h * MERGEFORMAT] above.

(1) At a minimum, the Model shall be capable of:

(a) Accurately predicting the flow rate and hydraulic grade line of wastewater in Force Mains from Major Pump Stations and the Major Gravity Sewer Lines under any historical dry or wet weather condition;

(b) Accurately predicting the location and severity of SSOs from the WCTS under any historical dry or wet weather condition;

(c) Fully dynamic temporal analysis, including an accounting of downstream backwater impacts on upstream flows;

(d) Accurately predicting the impacts of changes to Pump Station capacities on upstream and downstream flow rates and hydraulic grade lines, including hydraulic losses which may result from either full or partial Pump Station failures; and

(e) Generating hydrographs depicting baseline wastewater flow and I/I for the Sewer System for various storm recurrence intervals. The Model shall include methods for accurately estimating the baseline wastewater flows and I/I components in each Sewershed using quality-controlled flow data obtained for the

Sewer System.

(2) At a minimum, the City shall employ the Model to:

(a) Assist with the development and implementation of operation and maintenance procedures that optimize collection and transmission capacity;

(b) Evaluate the impacts which Infiltration/Inflow rehabilitation projects, proposed system modifications, and upgrades and expansions have on collection and transmission capacity and the performance of the City's Sewer System;

(c) Prioritize the continuing evaluation of the WCTS pursuant to the sewer assessment and rehabilitation in Paragraphs [REF _Ref387218022 \w \h * MERGEFORMAT] and [REF _Ref387217918 \w \h * MERGEFORMAT] above;

(d) Prioritize rehabilitation projects; and

(e) Implement the Capacity Assurance Program described in Paragraph [REF _Ref387218080 \w \h * MERGEFORMAT] below.

(3) The City shall develop and employ written procedures, protocols, and schedules to routinely perform:

(a) Calibrations of the Model to account for age-related and other changes to Sewer System hydraulics, and to obtain and manage updated data from physical field observations and measurements for this purpose;

(b) Verification of the Model's accuracy and performance; and

(c) Sensitivity analyses to determine how the Model responds to changes in input parameters and variables.

(4) Eight (8) Months after the ~~Effective Date of this Consent Decree and~~ implementation of the Mapping Program of Paragraph [REF _Ref387217960 \w \h * MERGEFORMAT] below, the City shall submit a report ("Model Report") to the EPA which:

(a) Identifies the functional attributes, characteristics, and limitations specific to the Model's software as compared to other

products evaluated by the City, and explains how the Model meets the capabilities required in Paragraph [REF _Ref387218158 \w \h * MERGEFORMAT] above;

(b) Identifies the date that the Model was deemed to be calibrated and functional;

(c) Identifies all input and output parameters, constants, and assumed values used by the Model;

(d) Explains the bases for the input parameters used in each Sewershed to characterize baseline wastewater flows and I/I, the quality assurance procedures used in acquiring the input data, and the engineering bases for the selections of constants (e.g., friction factors) and assumed values; and

(e) Provides a brief description of each procedure and protocol developed pursuant to Paragraph [REF _Ref387218213 \w \h * MERGEFORMAT] above, provides the associated schedules, and identifies the individual(s) with their qualifications who are employed to implement the procedures and protocols.

(5) Following receipt of the Model Report, the EPA and MDEQ may conduct compliance audits of the capabilities of the Model, the implementation of the Model, and the use of written procedures and protocols as required by this Paragraph.

e. Sewer Mapping Program. Within twenty-eight (28) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Sewer Mapping Program to update its Sewer System maps and update the capabilities and procedures for utilization of the City's future Geographic Information System ("GIS") map of the City's WCTS. At minimum, the Sewer Mapping Program shall:

(1) Enable the City to produce maps of the WCTS using GIS technology;

(2) Be designed in such a manner so as to allow electronic integration with the City's computer-based collection system model and computer-based operations and maintenance information management system;

(3) Enable the City to produce maps showing the location of all manholes, Gravity Sewer Lines, Pump Stations, Force Mains,

valves, inverted siphons and the WWTPs;

(4) Enable the City to produce maps capable of integrating electronically the locations of sewer service connections on lines that are televised;

(5) Enable the City to produce maps that include attribute data for the City's WCTS including, but not limited to, size, material, estimated age or age range, slope, invert elevation, and rim elevation;

(6) Enable the City to produce maps that delineate the spatial boundaries of all Sewersheds within the WCTS;

(7) Enable the City to produce maps that can integrate electronically available maps that show the location of surface streets and street addresses, permitted Fats, Oils and Grease ("FOG"; see Paragraph [REF _Ref387221731 \w \h]) customers, surface water bodies and political boundaries;

(8) Enable the City to produce maps in a manner that will allow use by all Sewer System operation and maintenance crew leaders in the field;

(9) Allow entry and mapping of work orders to identify and track problems geographically such as stoppages, service interruptions, and SSOs, and to assist in the planning and scheduling of maintenance;

(10) Include written standard operating procedures for use of the program, the acquisition and entry of updated mapping data for new assets or changes to existing assets, and updates to system software;

(11) Include locations of each permitted FOG establishment; and

(12) Include a schedule for the completion of the electronic mapping of each Sewershed in the City's WCTS.

f. Gravity Sewer System Operations and Maintenance Program. Within twenty-four (24) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Gravity Sewer System Operations and Maintenance Program to address SSOs, particularly those caused by FOG, roots and/or debris obstructions. At a minimum, the Gravity Sewer System Operations and Maintenance Program shall include the following:

(1) Written preventative operations and maintenance schedules and procedures which shall be scheduled appropriately and shall include, but not be limited to, written procedures for the following:

(a) Inspection and maintenance of all Gravity Sewers, manholes and inverted siphons;

(b) Identifying and documenting Gravity Sewer, manhole and inverted siphon conditions, including grease, roots, and/or debris accumulation;

(c) Identifying maintenance needs; and

(d) Scheduling preventative maintenance work/cleaning which the City may schedule in connection with the SSER Work Plan as described in Paragraph [REF _Ref387218022 \w \h * MERGEFORMAT] above.

(2) An engineering evaluation of potential sulfide and corrosion control options and a summary report of findings, including a recommendation of the preferred sulfide and corrosion control method(s); provided, however, that such corrosion control options and methods shall not apply to components made of plastic or other similar materials.

(3) Prioritization for evaluating the Gravity Sewers based upon the size of the pipe (e.g., starting with the larger pipes and work back to smaller pipes), location of SSOs, community input or other criteria the City finds appropriate.

(4) Inspection of Gravity Sewers, manholes, and inverted siphon easements, including inspection of creek crossings, canal crossings, stream bank encroachment toward Gravity Sewers, manholes and inverted siphons, and easement accessibility (including the need to control vegetative growth or encroachment of man-made structures or activities that could threaten the integrity of the affected Gravity Sewer, manhole, or inverted siphon). Inspections shall include written reports, and where appropriate, representative photographs or videos of appurtenances being inspected (Gravity Sewers, manholes, inverted siphons, creek crossings, canal crossings, etc.). Inspectors shall promptly report any observed SSOs to their area supervisors and shall record any evidence of SSOs which may have occurred since the last inspection. Any observed SSO shall be promptly reported in accordance with the SORP.

(5) A schedule for the maintenance of easements.

(6) A staffing and funding plan sufficient in structure, skills, numbers and funding to allow completion of the operation and maintenance activities required by this Paragraph [REF _Ref387218300 \w \h * MERGEFORMAT].

(7) Data attributes for the City's mapping program allowing program data to be compared in the City's IMS against other pertinent data such as the occurrence of SSOs, including repeat SSO locations and permit violations.

(8) An inventory management system that includes:

(a) A list of critical equipment and critical spare parts;

(b) A list of where critical spare parts and critical equipment may be secured to allow repairs in a reasonable amount of time for those spare parts and critical equipment that are not stored by the City, including spare pipe having a diameter of {24 inches} or greater; the list shall also set forth an inventory of spare parts and critical equipment stored by the City, as applicable; and

(c) Written procedures for updating the critical spare parts and equipment inventories in the IMS.

(9) Reports which list equipment problems and the status of work orders generated during the prior Month.

g. Pump Station Operations and Preventative Maintenance Program. Within twenty-one (21) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Pump Station Operations and Preventative Maintenance Program to facilitate proper operation and maintenance activities associated with the Pump Stations within the WCTS. At a minimum, the Pump Station Operations and Preventative Maintenance Program shall include the following:

(1) Identification of the means and modes of communication between Pump Stations, field crews, and supervising staff.

(2) Technical specifications of each Pump Station within the WCTS.

(3) A description of each Pump Station monitoring system which shall continuously monitor, report, and transmit information for each Pump Station.

(4) Written preventative operations and maintenance schedules and procedures which shall be scheduled appropriately and shall include, but not be limited to, written procedures for periodic service and calibration of instrumentation such as flow meters, liquid level sensors, alarm systems, elapsed time meters, and remote monitoring equipment. Such written preventative operations and maintenance schedules and procedures shall also include predictive (including non-physical inspections) and/or physical inspection and service for all Pump Stations including, but not limited to:

(a) Reading, recording and maintaining records of information from the elapsed time meters and pump start counters;

(b) Observing and documenting wet well conditions, including grease and/or debris accumulation;

(c) Checking and re-setting, as necessary to improve system performance, wet well pumping points (e.g., floats);

(d) Checking, recording and maintaining records of system pressure(s);

(e) Checking SCADA and/or alarm components;

(f) Checking stand-by power sources;

(g) Checking motor electrical system, including, but not limited to, line voltage on each leg quarterly, current draw on each leg quarterly, and resistance of windings on each leg quarterly; and

(h) Identifying maintenance needs.

(5) Written standard emergency/reactive operations and maintenance procedures. The City may use portable pumps, portable generators or alternative power sources as it deems appropriate. At a minimum, the standard emergency/reactive Pump Station operating procedures shall include:

(a) Criteria used to determine the need for emergency operations and maintenance;

(b) Initiation/use of stand-by power (e.g., portable generators), where applicable;

(c) Initiation/use of portable pump (e.g., bypass/pump-around operations), where applicable;

(d) Evaluation of the need for additional equipment for emergency/reactive operations, including, but not limited to, additional portable generators and/or additional portable pumps (for pump-around operations);

(e) Evaluation of the need for on-site standby power (e.g., on-site generator and/or second electrical feed from the power grid) for each Pump Station should the City choose, not to have a portable pump available for the Pump Station; and

(f) Establishing standard forms, reporting procedures and performance measures for emergency/reactive operations and maintenance.

(6) An inventory management system that includes:

(a) A list of critical equipment and critical spare parts;

(b) A list of where critical spare parts and critical equipment may be secured to allow repairs in a reasonable amount of time for those spare parts and critical equipment that are not stored by the City; the list shall also set forth an inventory of spare parts and critical equipment stored by the City, as applicable; and

(c) Written procedures for updating the critical spare parts and equipment inventories in the IMS.

(7) Reports which list equipment problems and the status of work orders generated during the prior Month.

(8) A staffing and funding plan sufficient in structure, skills, numbers and funding to allow completion of the operations and maintenance activities required by this Paragraph [REF _Ref387218349 \w \h * MERGEFORMAT].

h. Fats, Oils and Grease ("FOG") Control Program. Within eighteen (18) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a FOG Control Program. At a minimum, the FOG Control Program shall apply City-wide and include the following:

(1) A FOG characterization study that shall identify the sources of FOG causing problems in the WCTS and the most appropriate

method or mechanism for addressing those sources.

(2) The legal authority to control the discharge of FOG into the WCTS, including the ability to implement a permit and enforcement program for commercial and industrial sources.

(3) Specification of accepted devices to control the discharge of FOG into the WCTS.

(4) Establishment of standards for the design and construction of FOG control devices including standards for capacity and accessibility, site map, design documents and as-built drawings.

(5) Establishment of FOG control device management, operations and maintenance standards, or best management practices, that address onsite record keeping requirements, cleaning frequency, cleaning standards, use of additives, and ultimate disposal.

(6) Establishment of construction inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements, to assure that FOG control devices are constructed in accordance with established design and construction standards.

(7) Establishment of compliance inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements to assure that FOG control devices are being managed, operated and maintained in accordance with the established management, operation and maintenance standards or best management practices.

(8) Establishment of a FOG disposal manifest system, with the included requirements that FOG and septage not be comingled and that the point of origin be specified on the manifest.

(9) Establishment of an enforcement program, including specific enforcement mechanisms, to ensure compliance with the FOG Control Program.

(10) Establishment of a compliance assistance program to facilitate training of FOG generators and their employees.

(11) Establishment of a comprehensive public education program directed at reducing the amount of FOG entering the WCTS from residences.

(12) Establishment of staffing (technical and legal) and equipment requirements to ensure effective implementation of the FOG Control Program.

(13) A regularly maintained list of current commercial establishment FOG generators including a description of their FOG generating processes and estimated average quantity of FOG generated daily.

(14) Establishment of performance indicators to be used by the City to measure the effectiveness of the FOG Control Program.

(15) A schedule to review, evaluate and revise the FOG Control Program on at least an annual basis. Any revisions to the FOG Control Program shall be submitted to the EPA in accordance with Paragraphs [REF _Ref387218411 \w \h * MERGEFORMAT] through [REF _Ref387218427 \w \h * MERGEFORMAT] and [REF _Ref387218452 \w \h * MERGEFORMAT] of this Consent Decree.

Within six (6) Months after the EPA's approval of the FOG Control Program, the City shall enact the necessary City ordinances for the immediate implementation of the Program. After the ordinances become effective as provided by State law, the City shall implement the FOG Control Program, which shall be incorporated into, and become enforceable under, this Consent Decree.

i. Capacity Assurance Program. Within thirty-six (36) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Capacity Assurance Program ("CAP"), including a schedule for full implementation of the program not to exceed forty-eight (48) Months after the Effective Date. Pursuant to the capacity assessment performed in accordance with Paragraphs [REF _Ref387218022 \w \h * MERGEFORMAT] and [REF _Ref387217918 \w \h * MERGEFORMAT] above, the CAP shall identify any portion of the Sewer System with insufficient capacity under either peak wet weather, or average conditions, or both. It shall also analyze all portions of the WCTS that hydraulically impact all known SSOs and all components of a WWTP that may contribute to violations of the NPDES Permits. The CAP shall assess peak flow capacity of all Pump Stations, all Major Sewer Gravity Lines, all Force Mains and siphons and their respective related appurtenances, all known SSO locations, and any other portions of the WCTS that must be assessed so as to allow a technically-sound evaluation of the causes of SSOs and Prohibited Bypasses at a WWTP for existing and proposed flows. The CAP shall enable the City to authorize new sewer service connections, or increases in flow from existing sewer service connections, only after the City certifies that the analysis procedures contained in the approved CAP have been used and that the City has determined, based on those procedures, that there is Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate

Collection Capacity as set forth below. The Capacity Assurance Program shall include, at a minimum, the following:

(1) The technical information, methodology, and analytical techniques, including the model or software, to be used by the City to calculate collection, transmission, and treatment capacity.

(2) The means by which the City will integrate its certification of Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity with the issuance of building permits by the City and the City's acquisition of new or existing sewers from other owners.

(3) The means by which the City will integrate its certification of Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity with the requirements of Mississippi Commission on Environmental Quality Regulation 11 Miss. Admin. Code Part 6, Ch.1, Rule 1.1.1.C(1)(b) and Rule 1.1.6.B(2) and B(4), regarding the certification of capacity for the construction of new sewer lines that provide new flow into the City's Sewer System.

(4) The technical information, methodology, and analytical techniques, including the model or software, to be used by the City to calculate the net (cumulative) increase or decrease in volume of wastewater introduced to the WCTS as a result of the City's authorization of new sewer service connections and increases in flow from existing connections and the completion of: (i) specific projects that add or restore collection or transmission capacity to the WCTS or add or restore adequate treatment capacity at a WWTP as required by 40 C.F.R. § 133 ("Capacity Enhancing Projects"), (ii) specific projects that reduce peak flow through removal of I/I ("I/I Projects"), and (iii) permanent removal of sewer connections ("Removal of Connections").

(5) An Information Management System capable of tracking the accumulation of banked credits, earned pursuant to Paragraph [REF _Ref387218542 \w \h * MERGEFORMAT] below, from completion of Capacity Enhancing Projects, I/I Projects and Removal of Connections; the capacity-limited portion of the Sewershed in which those credits were earned; and the expenditure of such credits on future increases in flow from new or existing sewer service connections in that capacity-limited portion of the Sewershed.

(6) All evaluation protocols to be used to calculate collection, transmission, and treatment capacity including, but not limited to, standard design flow rate rules of thumb regarding pipe roughness, manhole head losses, as-built drawing accuracy (distance and slope), water use (gallons per capita per day), projected flow impact calculation techniques, and metering of related existing peak flows (flows metered in support of analysis and/or manual observation of existing peak flows). The City may identify sewer line segments which have been specifically designed and constructed to operate under surcharge conditions (e.g., with welded or bolted joints) and identify the level of surcharge for those segments.

(7) Capacity Certifications. Except as provided in Paragraphs [REF _Ref387218643 \w \h * MERGEFORMAT] through [REF _Ref387218698 \w \h * MERGEFORMAT] below, the City shall implement the CAP by authorizing a new sewer service connection, or additional flow from an existing sewer service connection, only after it certifies that the analysis procedures contained in the CAP have been used and that the City has determined, based on those procedures, that there is Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity as defined below:

(a) Treatment Capacity Certifications. The City's certification of "Adequate Treatment Capacity" shall confirm that, at the time a WWTP receives the flow from a proposed sewer service connection(s) or increased flow from an existing sewer service connection(s), when combined with the flow predicted to occur from all other authorized sewer service connections (including those which have not begun to discharge into the WCTS), the WWTP will not be in "non-compliance" for quarterly reporting as defined in 40 C.F.R. Part 123.45, Appendix A. In addition, the City's certification of "Adequate Treatment Capacity" shall confirm that the new or increased flow to a WWTP will not result in a Prohibited Bypass.

(b) Transmission Capacity Certifications. The City's certification of "Adequate Transmission Capacity" shall confirm that each Pump Station, through which the proposed additional flow from new or existing sewer service connections would pass to the WWTP receiving such flow, has the capacity to transmit, with its largest pump out of service, the existing one (1) hour peak flow passing through the Pump Station, plus the addition to the existing

one (1) hour peak flow predicted to occur from the proposed connection, plus the addition to the existing one (1) hour peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the WCTS.

(c) Collection Capacity Certifications. The City's certification of "Adequate Collection Capacity" shall confirm that each Major Gravity Line, through which the proposed additional flow from new or existing connections would pass, has the capacity to carry the existing one (1) hour peak flow passing through the Major Gravity Line, plus the addition to the existing one (1) hour peak flow from the proposed connection, plus the addition to the existing one (1) hour peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the WCTS without causing a Surcharge Condition.

(d) Definition of "One (1) Hour Peak Flow" and "Surcharge Condition." The terms set forth below are defined herein only for purposes of implementation of the CAP. The City agrees that it shall not use these definitions for purposes of establishing any design criteria for the implementation of rehabilitation measures to the Sewer System. The term "one (1) hour peak flow" shall mean the greatest flow in a sewer averaged over a sixty (60) minute period at a specific location expected to occur as a result of a representative 2 year-24 hour storm event. The term "Surcharge Condition" shall mean the condition that exists when the supply of wastewater resulting from the one (1) hour peak flow is greater than the capacity of the pipes to carry it and the surface of the wastewater in manholes rises to an elevation greater than twenty-four (24) inches above the top of the pipe or within three (3) feet of the rim of the manhole, and the sewer is under pressure or head, rather than at atmospheric pressure, unless the City has, pursuant to Paragraph [REF _Ref387221235 \w \h * MERGEFORMAT] above, identified that pipe segment and manhole as designed to operate in that condition, in which case the identified level of surcharge will be used.

(8) Minor Sewer Connections. For minor sewer service connections, the City may elect to perform a monthly capacity analysis for each Sewershed by certifying that the Sewershed has adequate capacity, as defined above, to carry existing peak flows and the additional flows generated by all such minor sewer service connections projected to be approved in the subsequent month. For any

Sewershed which can be so certified, the City may approve these projected minor sewer service connections without performing individual certifications for each connection. For the purposes of this Paragraph only, a "minor sewer service connection" is a connection with an average flow not to exceed 2,500 gallons per day.

(9) Capacity for Treatment, Transmission, and Collection in Lieu of Certification. The City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot satisfy the requirements of Paragraph [REF _Ref387221283 \w \h * MERGEFORMAT] above, provided the City certifies that all of the following provisions, where applicable, are satisfied:

(a) The City is in substantial compliance with this Consent Decree;

(b) The sewer lines which will convey the proposed additional flow from new or existing sewer service connections have not experienced dry weather SSOs due to inadequate capacity within the previous twelve (12) Months; or, in the alternative, the causes of any dry weather SSOs due to inadequate capacity have been eliminated;

(c) The City has identified the sewer line segment(s), Pump Station(s) and/or wastewater treatment systems that do not meet the conditions for certification of Adequate Treatment Capacity, Adequate Collection Capacity, and/or Adequate Transmission Capacity;

(d) The City shall complete, prior to the time the proposed additional flow from new or existing sewer service connections is introduced into the WCTS, specific Capacity Enhancing Projects, I/I Projects, and/or Removal of Connections which will add sewer capacity or reduce peak flows to the identified sewer line segment(s), Pump Station(s), and wastewater treatment system(s) in accordance with the factors set forth in Paragraphs [REF _Ref387221348 \w \h * MERGEFORMAT] and [REF _Ref387221388 \w \h * MERGEFORMAT] below;

(e) Where the City has undertaken specific Capacity Enhancing Projects that provide for additional off-line storage or additional treatment capacity, and/or specific Removal of

Connections to satisfy the requirements of Paragraph [REF _Ref387221430 \w \h * MERGEFORMAT] above, the estimated added capacity resulting from such projects must be equal to or greater than the estimated amount of any proposed additional flow;

(f) Where the City has undertaken specific I/I Projects or Capacity Enhancing Projects, other than those that provide for additional off-line storage or additional treatment capacity, to satisfy the requirements of Paragraph [REF _Ref387221430 \w \h * MERGEFORMAT] above, the estimated reduction in peak flows or added capacity resulting from such projects must exceed the estimated amount of any proposed additional flow by a factor of 3:1;

(g) Commencing within twelve (12) Months after the EPA's approval of the CAP and annually thereafter, the City has performed a review of specific Capacity Enhancing Projects and I/I Projects undertaken to determine if actual added capacity and peak flow reductions are in line with what the City originally estimated for such projects; and the City has used the results of this review to adjust future estimates as necessary;

(h) Any new sewer service connection or increase in flow to an existing connection authorized prior to the completion of a necessary added capacity or peak flow reduction project as set forth above shall be conditioned upon completion of such project prior to the time that the new sewer service connection or flow increase is introduced into the WCTS; and

(i) In implementing the provisions of this Paragraph [REF _Ref387218542 \w \h], the City may use a "banking credit system" for the sewer line segment(s), Pump Station(s), and/or wastewater treatment systems for which the City is not able to satisfy the conditions set forth in Paragraph [REF _Ref387221283 \w \h * MERGEFORMAT] above. The addition of sewer capacity and/or reduction in peak flows to the affected sewer line segment, Pump Station, or wastewater treatment system from (i) the completed sanitary sewer projects set forth on Appendix A, (ii) the Early Action Projects set forth on Appendix B, and/or (iii) Capacity Enhancement Projects, I/I Projects, and Removal of Connections completed after the Effective Date of this Consent Decree may be accumulated in the form of credits in the banking credit system in accordance with the factors set forth in Paragraphs [REF _Ref387221348 \w \h] and [REF _Ref387221388 \w \h].

above. Such credits may then be used for authorization of future sewer service connections or increases in flow from existing connections to the affected sewer line segment, Pump Station, or wastewater treatment system in the capacity-limited portion of the Sewershed. Increases in flow from all authorized new sewer service connections or increases in flow from existing connections occurring between the Effective Date of this Consent Decree and when the City begins full implementation of the CAP shall be deducted from any such accumulated credits in the banking credit system.

(9)

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(10) Essential Services. Notwithstanding the above provisions, the City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot certify that it has Adequate Transmission Capacity, Adequate Collection Capacity, and/or Adequate Treatment Capacity as defined above for health care facilities, public safety facilities, and public schools and, subject to the EPA review and approval, for government facilities; and in those cases where a pollution or sanitary nuisance condition exists, as determined by the local county health department or its regulatory successor, as the result of a discharge of untreated wastewater from an on-site septic tank.

(11) Existing Illicit Connections. Notwithstanding the provisions above, the City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot certify that it has Adequate Transmission Capacity and/or Adequate Collection Capacity and/or Adequate Treatment Capacity as defined above, for any illicit connections to the municipal separate storm sewer system ("MS4") which would otherwise result in the discharge of municipal sewage to waters of the State.

(12) Certifications. All certifications pursuant to this Paragraph [REF _Ref387218080 \w \h * MERGEFORMAT] shall be made by a professional engineer registered in the State of Mississippi and shall be approved by a responsible party of the City as defined by 40 C.F.R. § 122.22(b). The City shall maintain all such certifications, and all data on which the certifications are based, in its offices for inspection by the EPA and MDEQ. The EPA and MDEQ may request, and the City shall provide, any and all documentation necessary to support any certification made by the City pursuant to this Paragraph [REF _Ref387218080 \w \h *

MERGEFORMAT], and make available, to the extent possible, individuals providing such certifications to meet with the EPA and MDEQ.

j. Training Program. Within thirty-two (32) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a Training Program, including a schedule for full implementation of the program not to exceed twelve (12) Months after its approval by the EPA. The Training Program shall include, at a minimum, the following:

(1) Technical Training. The technical training component shall include, at a minimum, the following:

(a) Employee technical training and refresher technical training requirements (curriculum) that ensure that each City employee has a level of knowledge, commensurate with duties, of the overall functions of the City's infrastructure;

(b) A description of outside technical training and networking opportunities, such as conferences and seminars, that are made available to City employees;

(c) A description of the extent to which employee certification, at the State or at the City level, is required as a basis for obtaining or maintaining a position;

(d) Records of technical training, including on-the-job training, which shall be maintained in an information management system and shall describe the degree to which completed technical training and on-the-job training is tied to promotion and pay; and

(e) A description of the technical training required before an employee can undertake specific work assignments or tasks.

(2) Skills Training. The skills training component shall include, at a minimum, the following:

(a) Employee skills training and refresher skills training requirements (curriculum) that ensure that each City employee has a level of knowledge, commensurate with duties, of the specific equipment to be used and the procedures to be followed in carrying out duties;

(b) A description of outside skills training opportunities, such as manufacturers' training, that are made available to

employees;

(c) A description of the extent to which employee certification, at the State or at the City level, is required as a basis for obtaining or maintaining a position;

(d) Records of skills training, including on-the-job training, which shall be maintained in an information management system) and shall describe the degree to which completed skills training and on-the-job training is tied to promotion and pay; and

(e) A description of the skills and on-the-job training required before an employee can undertake specific work assignments or tasks.

(3) Safety Training. The safety training component shall include, at a minimum, the following:

(a) Employee safety training and refresher safety training requirements (curriculum) that ensure that each City employee has level of knowledge regarding on-the-job safety that is commensurate with the employee's equipment and work environment;

(b) A description of the extent to which employee safety certification at the State or at the City level is required as a basis for obtaining or maintaining a position;

(c) Records of safety training, including on-the-job training, which shall be maintained in an information management system and shall describe the degree to which completed safety training and on-the-job training is tied to promotion and pay; and

(d) A description of the safety training required before an employee can undertake specific work assignments or tasks.

k. [Chronic SSO Advanced /Remote Monitoring] Program. Within sixteen (16) Months after the Effective Date of this Consent Decree, the City shall install and maintain manhole and/or sewer surcharge level remote monitoring devices at the SSO locations identified on Appendix F, attached hereto and incorporated herein.

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(1) After this initial sixteen (16)-Month period, the City shall on a quarterly basis determine whether any SSO location in the WCTS experienced more than one (1) wet-weather related SSO in the previous twelve (12)-month period. The City shall then install and

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maintain manhole and/or sewer surcharge level remote monitoring devices at such SSO locations within four (4) Months after making such determination.

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(2) The remote monitoring devices shall monitor sewer surcharge levels and shall be designed to send to the City real-time alerts of a likely SSO event or events when specified thresholds are attained and/or exceeded, thereby improving the City's responsiveness to SSOs and sewer operations with the goal of preventing SSOs from occurring at these SSO locations. Within fourteen (14) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval its proposal for the thresholds for the remote monitoring devices that will trigger real-time alerts of a likely SSO event or events once those thresholds are attained and/or exceeded.

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(3) The City shall expeditiously inspect the SSO location(s) after a remote monitoring device indicates that the specified thresholds have been attained and/or exceeded at the SSO location(s). The City shall keep records with respect to all remote monitoring devices and SSO locations for a period of at least five (5) years. The City shall report all surcharge conditions identified by the remote monitoring devices in the Quarterly Report pursuant to Paragraph [REF _Ref485825796 \w \h] of this Consent Decree. The City shall report all SSOs discovered pursuant to the remote monitoring devices in accordance with the NPDES Permits, the SORP and the Quarterly and Annual Reports pursuant to Paragraphs [REF _Ref485825796 \w \h] and [REF _Ref485634140 \w \h] of this Consent Decree.

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(4) The City shall maintain these remote monitoring devices required by this Paragraph until such time as the City can demonstrate to the EPA that the cause of the SSO at a particular location has been appropriately addressed. The City may, however, reduce the number of remote monitoring devices if it can demonstrate to the EPA that SSO locations are related in such a manner that a single remote monitoring device can provide the required real-time alert for likely SSOs at multiple locations. If the City elects to monitor multiple SSO locations through a single remote monitoring device, the City shall expeditiously inspect all such related SSO locations when the remote monitoring device indicates that the specified thresholds have been attained and/or exceeded. The City shall also evaluate the benefits of this technology and other remote wastewater detection technologies for continued use within the

WCTS to increase efficiency in SSO prevention/response and to enhance hydraulic modeling efforts

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24. Permits. Where any compliance obligation under this Section requires the City to obtain a federal, state, or local permit or approval, the City shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The City may seek relief under the provisions of Section [REF _Ref322450615 \r \h * MERGEFORMAT] (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the City has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VIII. CIVIL PENALTY

25. Within thirty (30) Days after the Effective Date, the City shall pay the sum of $165,6000 as a civil penalty as follows: $82,8500 to the United States and $82,8500 to the State.

26. The City shall pay the civil penalty due to the United States either by use of https://www.pay.gov to the U.S. Department of Justice account, or by FedWire Electronic Funds Transfer ("EFT"), in accordance with instructions provided to the City by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Southern District of Mississippi after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which the City shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

~~/Insert name, address, phone number, and email address of the individual who will be responsible for making the payment/~~Mayor, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501
mayor@hattiesburgms.com

on behalf of the City. The City may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and the EPA in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT] (Notices). At the time of payment, the City shall send notice that payment has been made: (i) to the EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at the EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT]; and (iii) to the EPA in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT]. Such notice shall reference the CDCS Number and DOJ case number 90-5-1-1-10964. In the

event that full cash payment to the United States is not made within thirty (30) Days of the Effective Date, the City shall also pay to the United States interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

27. The City shall pay the civil penalty due to MDEQ by check payable to the "Mississippi Department of Environmental Quality." The check shall reference the case name and civil action number herein and shall be sent to: Mississippi Department of Environmental Quality, Attn: Jennifer Parish, P.O. Box 2339 Jackson, Mississippi 39225. In the event that full cash payment to MDEQ is not made within thirty (30) Days of the Effective Date, the City shall also pay to MDEQ interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT

28. The City shall satisfactorily implement and complete the Supplemental Environmental Project ("SEP") in accordance with all provisions of Appendix E of this Consent Decree. The SEP shall be completed in accordance with the schedule set forth in Appendix E.

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29. As more particularly described in Appendix E, the SEP shall consist of projects to reduce extraneous flows entering the WCTS through defective private laterals and through illicit connections from residential properties the owners of which face financial hardship as determined under Section B of Appendix E. The total expenditure for the SEP shall be not less than $220,800, exclusive of certain costs detailed in Section C of Appendix E. The City may use contractors or consultants in planning and implementing the SEP.

30. With regard to the SEP, the City certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the City in good faith estimates that the cost to implement the SEP is $220,800.

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

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

d. That the City has not received and will not receive credit for the SEP in any other enforcement action.

e. That the City will not receive any reimbursement for any portion of the SEP from any other person.

f. That the City is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP and that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could fund the same activity as the SEP. For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, federal loan, or federally-guaranteed loan, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

31. "Satisfactory completion" of the SEP shall include the completion of a minimum number of forty-five (45) repairs or replacements of defective private laterals or removals of illicit connections, and a minimum expenditure of $220,800 of eligible SEP costs.

32. SEP Completion Report. Within thirty (30) Days after the date set for completion of the SEP, the City shall submit a SEP Completion Report to the EPA for review and approval. The SEP Completion Report shall contain all of the following information:

a. A detailed description of the SEP as implemented.

b. A description of any problems encountered in completing the SEP and the solutions thereto.

c. An itemized list of all eligible SEP costs expended.

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree.

e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

33. The EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate the City's SEP Completion Report.

34. After receiving the SEP Completion Report, the EPA shall notify the City whether or not the City has satisfactorily completed the SEP. If the City has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section [REF _Ref475015844 \w \h] of this Consent Decree.

35. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section [REF _Ref405378877 \w \h] of this Decree

(Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

36. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph [REF _Ref387046011 \w \h].

37. Any public statement, oral or written, in print, film, or other media, made by the City making reference to the SEP under this Decree from the date of its execution of this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States et al. v. City of Hattiesburg, taken on behalf of the U.S. Environmental Protection Agency and the Mississippi Department of Environmental Quality to enforce the Clean Water Act and the Mississippi Air and Water Pollution Control Law."

X. REPORTING REQUIREMENTS

38. The City shall submit the following reports:

a. Quarterly Reports. Beginning one (1) Month after the first Calendar Quarter following the Effective Date of this Consent Decree, and one (1) Month after each subsequent Calendar Quarter thereafter until termination of the Consent Decree, the City shall submit to the EPA for review and approval a Quarterly Report that shall include the date, time, location, source, estimated duration, estimated volume, receiving water (if any), and cause of all SSOs occurring in the applicable three (3)-Month period in a tabulated electronic format. Beginning sixteen (16) Months after the Effective Date of this Consent Decree, each Quarterly Report shall also (i) indicate whether a reported SSO experienced more than one (1) wet-weather related SSO event in the previous twelve (12)-month period and (ii) include information on all surcharge conditions identified by the remote monitoring devices as required pursuant to Paragraph [REF _Ref485890386 \w \h] of this Consent Decree.

~~a.~~

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b. Semi-Annual Reports. Beginning one (1) Month after the first two (2) Calendar Quarters following the Effective Date of this Consent Decree, and one (1) Month after each subsequent two (2) Calendar Quarters until termination of the Consent Decree, the City shall submit to the EPA for review and approval a Semi-Annual Report. Each Semi-Annual Report shall include, at a minimum:

(1) A description of projects and activities completed and milestones achieved during the previous applicable six (6)-Month period pursuant to the requirements of this Consent Decree, in Gantt chart or similar format, including a description of the status of

compliance or non-compliance with the requirements of this Consent Decree and, if applicable, the reasons for non-compliance. If any non-compliance cannot be fully explained at the time the report is due, the City shall include a statement to that effect in the report. The City shall investigate to determine the cause of the non-compliance and then shall submit an amendment to the report, including a full explanation of the cause of the non-compliance, within thirty (30) Days after submission of the Semi-Annual Report.

(2) A summary of significant projects and activities anticipated to be performed, and milestones anticipated to be achieved, in the successive applicable six (6)-Month period to comply with the requirements of this Consent Decree, in Gantt chart or similar format.

(3) Any additional information the City determines is appropriate to demonstrate that the City is implementing the remedial actions required under this Consent Decree in an adequate and timely manner.

c. Annual Reports. Beginning two (2) Months after the first full Calendar Year, and two (2) Months after each subsequent Calendar Year until termination of this Consent Decree, the City shall submit to the EPA for review and approval an Annual Report. Each Annual Report shall cover the most recent applicable Calendar Year and shall include, at a minimum:

(1) A summary of the CMOM Programs implemented or modified pursuant to this Consent Decree, including a comparison of actual performance with any performance measures that have been established.

(2) A trends analysis of the number, volume, duration, and cause of the City's SSOs for the previous two Calendar Years updated to reflect the SSOs that occurred during the previous twelve (12)-Month period except that the first Annual Report shall only include the first twelve (12) Months.

39. Except as otherwise provided in the SORP or ERP, whenever any violation of this Consent Decree or any other event affecting the City's performance under this Consent Decree or its NPDES Permits may pose an immediate threat to the public health or welfare or the environment, the City shall notify, pursuant to Section [REF _Ref463351858 \n \h] (Notices), the EPA and MDEQ orally or by electronic or facsimile transmission as soon as possible, but no

later than twenty-four (24) hours after the City first knew of the violation or event. This procedure is in addition to the requirements set forth in Paragraph [REF _Ref405368543 \w \h].

40. All reports shall be submitted to the persons designated in Section [REF _Ref322450461 \r \h * MERGEFORMAT] (Notices).

41. Each report by the City under this Section shall be submitted in accordance with the provisions of Paragraph [REF _Ref387046011 \w \h * MERGEFORMAT] of this Consent Decree. The certification requirement in Paragraph [REF _Ref387046011 \w \h * MERGEFORMAT] does not apply to emergency or similar notifications where compliance would be impractical, including notifications required under Paragraph [REF _Ref405368992 \w \h].

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

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

XI. **STIPULATED PENALTIES**

44. The City shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section [REF _Ref322450784 \r \h * MERGEFORMAT] (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

45. Late Payment of Civil Penalty. If the City fails to pay the civil penalty required to be paid under Section [REF _Ref322450322 \r \h * MERGEFORMAT] (Civil Penalty) when due, the City shall pay a stipulated penalty of $1,000 per Day for each Day that the payment is late.

46. The following stipulated penalties shall accrue for each violation identified below:

a. SSOs Reaching Waters. For each SSO that reaches waters of the United States or the State, a stipulated penalty may be assessed as follows:

If SSO Occurs in:	Penalty Per Violation Per Day:
Calendar Years 2019-2021	$500
Calendar Years 2022 until Termination	$1,000

b. Failure to Timely Submit Deliverable. For each day the City fails to Timely submit any Deliverable, a stipulated penalty for each such Deliverable may be assessed as follows:

Period of Noncompliance:	Penalty Per Deliverable Per Day:
1-30 days	$500
31-60 days	$1,000
More than 60 days	$2,000

c. Failure to Timely Implement Work. For each day the City fails to Timely implement any Work, daily stipulated penalties may be assessed for each such item of Work as follows:

Period of Noncompliance:	Penalty Per Violation Per Day:
1-30 days	$500
31-60 days	$1,000
61 days -180 days	$2,000
More than 180 days	$5,000

d. Failure to Timely Report SSOs. For each SSO that the City fails to Timely report in a Quarterly Report as set forth in Paragraph [REF _Ref470788139 \w \h] of this Consent Decree, a stipulated penalty of $5,000 may be assessed.

e. Failure to Timely Implement SEP Milestones. For each Day the City fails to Timely implement a SEP milestone set forth in Section [REF _Ref475018243 \w \h] or Appendix E, daily stipulated penalties may be assessed as follows:

Period of Noncompliance:	Penalty Per Violation Per Day:
1-30 days	$500
31-60 days	$1,000

g.f. Failure to satisfactorily complete the SEP. For the SEP identified in Section [REF _Ref474768983 \w \h] and Appendix E, if the City fails to satisfactory complete the SEP as described, a stipulated penalty of $242,880, minus any creditable expenditures as determined by the EPA, and minus any stipulated penalties already paid under Paragraph 46.e, may be assessed.

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

48. The City shall pay any stipulated penalty within thirty (30) Days of receiving a United States' written demand. The City shall pay fifty (50) percent of the total stipulated penalty amount due to the United States and fifty (50) percent to the State.

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

50. Stipulated penalties shall continue to accrue as provided in Paragraph [REF _Ref324245385 \r \h * MERGEFORMAT], 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 the EPA, after consultation with MDEQ, and is not appealed to the Court, the City shall pay accrued penalties determined to be owing, together with interest, within thirty (30) Days of the effective date of the agreement or the receipt of the EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the City 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, the City shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

51. The City shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph [REF _Ref324245444 \r \h * MERGEFORMAT], except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. The City shall pay stipulated penalties owing to the State in the manner set forth in Paragraph [REF _Ref383433461 \w \h * MERGEFORMAT].

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

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

54. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section [REF _Ref322450868 \r \h * MERGEFORMAT] (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for the City's violation of this Decree or applicable law, including but not limited to an action against the City for statutory penalties, additional injunctive relief, mitigation or offset measures,[ADVANCE \l0][ADVANCE \d0] and/or contempt.[ADVANCE \l0] However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

XII. **FORCE MAJEURE**

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

56. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the City shall provide notice orally or by electronic or facsimile transmission to the EPA and MDEQ, within 72 hours of when the City first knew that the event might cause a delay. Within seven (7) days thereafter, the City shall provide in writing to the EPA and MDEQ an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the City's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The City shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the City from asserting any claim of force

majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The City shall be deemed to know of any circumstance of which the City, any entity controlled by the City, or the City's contractors knew or should have known.

57. If the EPA, after a reasonable opportunity for review and comment by MDEQ, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the EPA, after a reasonable opportunity for review and comment by MDEQ, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

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

59. If the City elects to invoke the dispute resolution procedures set forth in Section [REF _Ref322450892 \r \h * MERGEFORMAT] (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of the EPA's notice. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs [REF _Ref324245533 \r \h * MERGEFORMAT] and [REF _Ref324245536 \r \h * MERGEFORMAT]. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Consent Decree identified to the EPA and the Court.

XIII. **DISPUTE RESOLUTION**

60. 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. The City's failure to seek resolution of a dispute under this Section shall preclude the City from raising any such issue as a defense to an action by the United States to enforce any obligation of the City arising under this Decree.

61. 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 the City sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement between the United States and the City. The United States

shall consult with the State during the period of informal negotiations. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below.

62. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State 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 City's position and any supporting documentation relied upon by the City.

63. The United States shall serve its Statement of Position within sixty (60) Days of receipt of the City's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. If within five (5) Days of receiving the United States' Statement of Position, the City requests to confer, the United States agrees to confer (in person or by telephone) with the City, but such a conference shall be concluded no later than twenty-one (21) Days after the issuance of the United States' Statement of Position. Within fourteen (14) Days after the conclusion of the conference, the United States will either reaffirm its Statement of Position or issue an amended Statement of Position. If the United States fails to either reaffirm or amend its Statement of Position within this fourteen (14) Day period, its Statement of Position shall be deemed reaffirmed. The United States' Statement of Position shall be binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

64. The City may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section [REF _Ref322450461 \r \h * MERGEFORMAT] (Notices), a motion requesting judicial resolution of the dispute. If the City did not request to confer with the United States pursuant to preceding Paragraph, the City's motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. If the City requested to confer with the United States pursuant to the preceding Paragraph, the City's motion must be filed within ten (10) Days after the expiration of the fourteen (14) Day period following the conference during which the United States either reaffirms or amends its Statement of Position. The motion shall contain a written statement of the City's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

65. The United States shall respond to the City's motion within the time period allowed by the Local Rules of this Court. The United States shall consult with the State during preparation of its response. The City may file a reply memorandum, to the extent permitted by the Local Rules.

66. Standard of Review. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph [REF _Ref324245586 \n \h], the City shall bear the burden of demonstrating that its position complies with this Consent Decree and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and that it must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

67. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the City under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph [REF _Ref324245630 \r \h * MERGEFORMAT]. If the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section [REF _Ref322450920 \r \h * MERGEFORMAT] (Stipulated Penalties).

XIV. **INFORMATION COLLECTION AND RETENTION**

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

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;

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

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

e. assess the City's compliance with this Consent Decree.

69. Upon request, the City shall provide the EPA and MDEQ or their authorized representatives splits of any samples taken by the City. Upon request, the EPA and MDEQ shall provide the City splits of any samples taken by the EPA or MDEQ.

70. Until five (5) years after the termination of this Consent Decree, the City shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to the City's performance of its obligations under this Consent Decree. This information-retention

requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, the City shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

71. At the conclusion of the information-retention period provided in the preceding Paragraph, the City shall notify the United States and the State at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, the City shall deliver any such documents, records, or other information to the EPA or MDEQ. The City may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the City asserts such a privilege, it shall provide the following: (a) a title for the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the City. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

72. The City may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that the City seeks to protect as CBI under 40 C.F.R. Part 2, the City shall follow the procedures set forth in 40 C.F.R. Part 2. The City may also assert that information required to be provided under this Section is protected as "trade secrets" under Miss. Code Ann. Section 49-17-39. As to any information that the City seeks to protect as trade secrets under said Section 49-17-39, the City shall follow the procedures set forth in Section 49-17-39.

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

XV. **EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

74. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging of this Consent Decree.

75. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA, the MAWPCL, or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph [REF

_Ref324245690 \r \h * MERGEFORMAT]. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the City's Sewer System, whether related to the violations addressed in this Consent Decree or otherwise.

76. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Sewer System or the City's violations, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph [REF _Ref324245690 \r \h * MERGEFORMAT].

77. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The City is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the City's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, the MAWPCL, or with any other provisions of federal, State, or local laws, regulations, or permits.

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

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

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

81. 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.

XVI. **COSTS**

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

XVII. **NOTICES**

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

As to the United States:
By Mail:
EES Case Management Unit
Re: DJ # 90-5-1-1-10964
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

By Email:
[HYPERLINK "mailto:eescdcopy.enrd@usdoj.gov"] Re: DJ # 90-5-1-1-10964

And

Chief, NPDES Enforcement and Permitting Branch
Water Protection Division
U.S Environmental Protection Agency, Region 4
ATTN: Richard Elliott
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8691

As to the EPA:
Chief, NPDES Enforcement and Permitting Branch
Water Protection Division
U.S Environmental Protection Agency, Region 4
ATTN: Richard Elliott
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8691

As to the State/MDEQ:
Chief, Environmental Compliance and Enforcement Division
Office of Pollution Control
Mississippi Department of Environmental Quality
P.O. Box 2261
Jackson, MS 39225-2261
(601) 961-5682

As to the City:
Mayor, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501

Director of Engineering, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4540

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

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

XVIII. **EFFECTIVE DATE**

86. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIX. **RETENTION OF JURISDICTION**

87. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections [REF _Ref322450968 \r \h * MERGEFORMAT] and [REF _Ref322450984 \r \h * MERGEFORMAT], or effectuating or enforcing compliance with the terms of this Decree.

XX. **MODIFICATION**

88. Except as otherwise set forth in Paragraphs [REF _Ref383531021 \w \h * MERGEFORMAT], [REF _Ref387753848 \r \h], or [REF _Ref387753878 \w \h] of this Consent Decree, 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. Non-material changes to this Consent Decree (including appendices) may be made by written agreement of the Parties without Court approval.

89. Any disputes concerning modification of this Decree shall be resolved pursuant to Section [REF _Ref322451014 \r \h * MERGEFORMAT] (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph [REF _Ref324245744 \r \h * MERGEFORMAT], 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).

XXI. **TERMINATION**

90. This Consent Decree may be terminated when the United States determines that the City has satisfactorily completed the requirements of Section [REF _Ref322451030 \r \h * MERGEFORMAT] (Compliance Requirements), provided the City has fulfilled all other obligations of this Consent Decree, including payment of the civil penalty and any accrued stipulated penalties as required by this Consent Decree not waived or reduced by the United States. The City may serve upon the United States a Request for Termination, certifying that the City has satisfied those requirements, together with all necessary supporting documentation.

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

92. If the United States, after consultation with the State, does not agree that the Decree may be terminated, the City may invoke Dispute Resolution under Section [REF _Ref322451081 \r \h * MERGEFORMAT]. However, the City shall not seek Dispute Resolution of any dispute regarding termination until one hundred and twenty (120) Days after service of its Request for Termination.

XXII. **PUBLIC PARTICIPATION**

93. 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. The City and the State each consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the Parties in writing that it no longer supports entry of the Decree.

XXIII. **SIGNATORIES/SERVICE**

94. Each undersigned representative of the City, the State, the EPA, 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.

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

XXIV. **INTEGRATION**

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

XXV. **FINAL JUDGMENT**

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

XXVI. **APPENDICES**

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

"Appendix A" is a list of completed ~~COMSWIP~~ sewer improvement projects including COMSWIP projects;

"Appendix B" is a list of the Early Action Projects;

"Appendix C" are maps of the Priority Areas;

"Appendix D" is the EPA Region 4 guidance on Capacity, Management, Operation, and Maintenance ("CMOM") programs;

"Appendix E" is the Supplemental Environmental Project; and

"Appendix F" is the list of SSOs for the initial monitoring devices.

Dated and entered this __ day of _____, 201_

_____
UNITED STATES DISTRICT JUDGE
Southern District of Mississippi

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE UNITED STATES OF AMERICA:

_____

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

_____

VALERIE K. MANN
DC Bar No. 440744
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611
Telephone: 202/616-8756
Facsimile: 202/616-2427
Email: Valerie.mann@usdoj.gov

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

United States Attorney
Southern District of Mississippi

_____

Assistant United States Attorney
Southern District of Mississippi
501 East Court Street
Suite 4.430
Jackson, Mississippi 39201

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

_____
MARY J. WILKES
Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Of Counsel:
WILLIAM B. BUSH, JR.
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, GA 30303

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

_____
MARK POLLINS
Division Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

_____
LOREN DENTON
Branch Chief
Municipal Enforcement Branch
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

_____
ROBERT D. FENTRESS
Attorney-Advisor
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi:

FOR PLAINTIFF STATE OF MISSISSIPPI BY AND THROUGH THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY AND THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY:

_____

GRETCHEN L. ZMITROVICH
MS Bar No. 101470
Senior Attorney
Office of Pollution Control
Mississippi Department of Environmental Quality
P.O. Box 2261
Jackson, MS 39225
Telephone: 601/961-5050
Facsimile: 601/961-5674
Email: GZMITROVICH@mdeq.ms.gov [HYPERLINK "mailto:Gretchen_Zmitrovich@mdeq.ms.gov"]

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi:

FOR THE CITY OF HATTIESBURG:

_____

MAYOR ~~JOHNNY L. DUPREE~~TOBY BARKER
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED STATES OF AMERICA and The STATE OF MISSISSIPPI, Plaintiffs, v. The CITY OF HATTIESBURG, MISSISSIPPI, Defendant.	)))))))))))	Case No. CONSENT DECREE

TABLE OF CONTENTS

[TOC \O "1-3"]

I. INTRODUCTION

A. WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (the "EPA"), has filed a complaint concurrently with this Consent Decree, alleging that Defendant, the City of Hattiesburg, Mississippi (the "City"), has violated and continues to violate Section 301 of the Clean Water Act ("CWA"), 33 U.S.C. § 1311, and terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") permits issued under Section 402 of the CWA, 33 U.S.C. § 1342; and seeking injunctive relief and civil penalties pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d);

B. WHEREAS, Plaintiff the State of Mississippi, acting through the Mississippi Commission on Environmental Quality and the Mississippi Department of Environmental Quality ("MDEQ") (collectively, the "State"), joined in the Complaint and seeks injunctive relief and civil penalties for the City's alleged violations of the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1, *et seq.* ("MAWPCL");

C. WHEREAS, the State is also a Plaintiff in this action and is joined as a party under Section 309(e) of the CWA, 33 U.S.C. § 1319(e), which requires the state in which a municipality is located to be joined as a party whenever the municipality is a party to a civil action brought by the United States under Section 309 of the CWA;

D. WHEREAS, the State has been authorized by the EPA to administer the NPDES program in Mississippi pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b);

E. WHEREAS, the City is a "municipality" pursuant to Section 502 of the CWA, 33 U.S.C. § 1362;

F. WHEREAS, the City's Wastewater Collection and Transmission System ("WCTS") transports wastewater to the City's two wastewater treatment plants, the Hattiesburg South Wastewater Treatment Plant ("South Lagoon") and the Hattiesburg North Wastewater Treatment Plant ("North Lagoon");

G. WHEREAS, the South Lagoon and its related WCTS are regulated pursuant to NPDES Permit number MS0020303, and the North Lagoon and its related WCTS are regulated pursuant to NPDES Permit number MS0020826;

H. WHEREAS, the Mississippi Commission on Environmental Quality and the City have entered into Agreed Order No. 6034 11, dated October 5, 2011, as amended on February 13, 2012, August 12, 2014, and December 7, 2016, regarding the compliance issue of wastewater discharges from the South Lagoon and the North Lagoon under the NPDES Permits referenced in Paragraph G above;

I. WHEREAS, the EPA and the State have determined, based upon information provided

by the City, that the City has had hundreds of unauthorized Sanitary Sewer Overflows ("SSOs") since January 1, 2012;

J. WHEREAS, the City represents that based on previous investigations, including those conducted pursuant to the City's Comprehensive Sewer and Water Investment Project ("COMSWIP"), the City identified and completed within the past several years certain sanitary sewer projects costing approximately $16.95~~15.5~~ million including several projects to address conditions that caused SSOs in the WCTS. Such completed sanitary sewer projects are more particularly described and depicted on a map as set forth on Appendix A, attached hereto and incorporated herein;

K. WHEREAS the EPA and the State have determined that the City has no effective system of SSO reporting or record-keeping, and has thus failed to comply with the reporting requirements of its NPDES Permits;

L. WHEREAS, the United States and the State contend that these SSOs and reporting failures are violations of the CWA, MAWPCL, and the City's NPDES Permits;

M. WHEREAS, the City does not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint;

N. 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 between the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section [REF _Ref322450365 \r \h * MERGEFORMAT]I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. This Court has supplemental jurisdiction over the state law claims asserted by the State pursuant to 28 U.S.C. § 1367. 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) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and the City conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, the City consents to the Court's jurisdiction over this Decree, over any such action, and over the City and consents to venue in this judicial district.

2. For purposes of this Consent Decree, the City agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), and Miss. Code Ann. § 49-17-29 and § 49-17-43.

III. APPLICABILITY

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

4. No transfer of ownership or operation of any portion of the Sewer System, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of the Decree are implemented. At least thirty (30) Days prior to such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States and MDEQ, in accordance with Section [REF _Ref322450400 \r \h * MERGEFORMAT] (Notices). Any attempt to transfer ownership or operation of the Sewer System without complying with this Paragraph constitutes a violation of this Decree.

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

6. In any action to enforce this Consent Decree, the City 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.

IV. OBJECTIVES

7. All plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing the City to achieve and maintain full compliance with the CWA and the MAWPCL, including the goal of eliminating all Sanitary Sewer Overflows.

V. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA (including, without limitation, those terms defined in Section 502 of the CWA, 33 U.S.C § 1362, and at 40 C.F.R. § 122.2) shall have the meanings assigned to

them in the CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Building Backup" shall mean a wastewater release or backup into a building that is caused by blockages, flow conditions, or other malfunctions in the Wastewater Collection and Transmission System. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a portion of a Private Lateral located on private property outside of the City's right-of-way or easement is not a Building Backup.

b. "Calendar Quarter" shall mean the three (3)-month periods ending on March 31, June 30, September 30, and December 31.

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

d. "Certification" or "certify" when used in this Consent Decree shall require the City to comply with Paragraph [REF _Ref387046011 \w \h] of this Consent Decree.

e. "The City" or "Defendant" shall mean the City of Hattiesburg, Mississippi, a municipal corporation, including all of its departments, agencies, instrumentalities such as the Water and Sewer Department, and any successor thereto.

f. "CMOM" or "Capacity, Management, Operations, and Maintenance" shall mean a program of accepted industry practices to properly manage, operate and maintain sanitary wastewater collection, transmission and treatment systems, investigate capacity-constrained areas of these systems, and respond to SSO events.

g. "Complaint" shall mean the complaint filed by the United States and the State in this action.

h. "COMSWIP" shall mean the City's Comprehensive Sewer and Water Investment Project.

i. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section [REF _Ref322450534 \r \h * MERGEFORMAT]). In the event of a conflict between this document and any appendix, this document shall control.

j. "CWA" shall mean the Clean Water Act, as amended, 33 U.S.C. §§ 1251, *et seq.*

k. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Southern District of Mississippi.

l. "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.

m. "Deliverable" shall mean any written document required to be prepared and/or submitted by or on behalf of the City pursuant to this Consent Decree.

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

o. "Effective Date" shall have the definition provided in Section [REF _Ref322450432 \r \h * MERGEFORMAT].

p. "Excessive ~~Inflow/~~Infiltration/Inflow" or "Excessive I/I" shall have the meaning provided in 40 C.F.R. § 35.2005(b)(16).

q. "Force Main" shall mean any pipe which is owned or operated by the City 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 Line" or "Gravity Sewer" shall mean any pipe which is owned and operated by the City that receives, contains and conveys wastewater not normally under pressure, but is 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.

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 waters, surface runoff, street wash waters, or drainage.

u. "I/I" shall mean the total quantity of water from ~~Inflow,~~ Infiltration, Inflow, and rainfall dependent ~~Inflow and~~ Infiltration and Inflow without distinguishing the source.

v. "MAWPCL" shall mean the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq*.

w. "Major Gravity Line" shall mean any of the following:

(1) all Gravity Sewer Lines that are twelve (12) inches in diameter or larger;

(2) all Gravity Sewer Lines that convey wastewater from one pumping station service area to another pumping station service area; and

(3) all Gravity Sewer Lines that have caused or contributed, or that the City knows will likely cause or contribute to capacity-related SSOs.

x. "Month" shall mean one (1) calendar month running from the numbered day to the same numbered day of the following calendar month, regardless of whether the particular month has 28, 29, 30 or 31 days. In the event a triggered event would occur on a day of the month which does not exist (for example, on February 30), then the event shall be due on the first day of the following month (for example, March 1).

y. "MDEQ" shall mean the Mississippi Department of Environmental Quality and the Mississippi Commission on Environmental Quality, collectively, and any successor departments or agencies of the State.

z. "NPDES" shall mean the National Pollutant Discharge Elimination System authorized under Section 402 of the CWA, 33 U.S.C. § 1342.

aa. "NPDES Permits" shall mean NPDES permit No. MS0020303 issued to the City pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the South Lagoon, and NPDES permit No. MS0020826 issued to the City pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the North Lagoon, and any future extended, modified, or reissued permits.

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

cc. "Parties" shall mean the United States of America on behalf of the EPA, the State acting through MDEQ, and the City.

dd. "Plaintiffs" shall mean the United States of America on behalf of the EPA, and the State acting through MDEQ.

ee. "Private Lateral" shall mean that portion of a sanitary sewer conveyance pipe that extends from the wastewater main to the single-family, multi-family, apartment, or other dwelling unit or commercial or industrial structure to which wastewater service is or has been provided.

ff. "Prohibited Bypass" shall mean the intentional diversion of waste streams from any portion of a treatment facility which is prohibited pursuant to the terms set forth

at 40 C.F.R. § 122.41(m).

gg. "Public Document Repository" or "PDR" shall mean the Office of the City Clerk located at Hattiesburg City Hall, 200 Forrest Street, Hattiesburg, Mississippi, 39401 and the City's website, www.hattiesburgms.com.

hh. "Pump Station" shall mean facilities which are owned or operated by the City 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 pump station.

ii. "Sanitary Sewer Overflow" or "SSO" shall mean any discharge of wastewater to waters of the United States or the State from the City's Sewer System through a point source not specified in any NPDES permit, as well as any overflow, spill, or release of wastewater to public or private property from the Sewer System that may not have reached waters of the United States or the State, including all Building Backups.

jj. "SCADA" shall mean supervisory control and data acquisition.

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

ll. "Sewershed" shall mean the subdivisions of the City's WCTS containing sewers that are primarily hydraulically linked.

mm. "Sewer System" shall mean the WCTS and the WWTPs.

nn. "State" shall mean the State of Mississippi, including all of its departments, agencies, and instrumentalities.

oo. "Timely" when applied to the submittal of a Deliverable shall mean submitted no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and containing all of the elements pertaining to the submittal as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree). "Timely" when applied to the implementation of any Work shall mean implemented no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and in accordance with the elements pertaining to such Work as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree).

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

qq. "Wastewater Collection and Transmission System" or "WCTS" shall mean the municipal wastewater collection, retention and transmission system, including

all pipes, Force Mains, Gravity Sewer Lines, Pump Stations, pumps, manholes, and appurtenances thereto, which are owned or operated by the City.

rr. "Wastewater Treatment Plants" or "WWTPs" 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 include all facilities owned, managed, operated, and maintained by the City, including but not limited to the South Lagoon and the North Lagoon, and all components of such sewage treatment plants.

ss. "Work" shall mean all activities the City is required to perform under this Consent Decree.

VI. REVIEW OF DELIVERABLES/CERTIFICATION OF DELIVERABLES

9. Public Document Repository/ Public Review Requirement. The City shall post on its website instructions for how the public can request email notices of future Deliverables. Prior to the submission of each Deliverable to the EPA and MDEQ, the City shall post a copy of the Deliverable in its PDR and provide notice of such action by email to all parties who have requested such notice. The City shall also send to the PDR, prior to the submission of each Deliverable to the EPA and MDEQ, a memorandum containing a brief synopsis of the Deliverable and instructions on how to find the Deliverable on the City's website. The City shall post on its website instructions for submitting comments, and shall allow the public a period of thirty (30) Days to comment on, the following Deliverables: (i) the Priority Areas Evaluation Report/Rehabilitation Plan required under Paragraph 21; (ii) the Sewer Overflow Response Plan required under Paragraph 23.a.; (iii) the Emergency Response Plan required under Paragraph 23.b.; the Fats, Oils and Grease Control Program required under Paragraph 23.h.; and the Capacity Assurance Program required under Paragraph 23.i. After the thirty (30)-Day comment period, the City shall consider public comments for a period of at least fifteen (15) Days before submitting the Deliverable to the EPA and MDEQ. Within seven (7) Days after submitting a Deliverable to the EPA and MDEQ, the City shall place a copy of the submitted version of the Deliverable in its PDR. Within seven (7) Days after the EPA's approval, approval contingent upon conditions, or modification by the EPA, the City shall place a copy of such final version of the Deliverable in its PDR. The City shall maintain in its PDR until termination of this Consent Decree all written comments received from the EPA and MDEQ along with all submitted versions of Deliverables.

10. Copy to MDEQ. The City shall provide a copy of any Deliverable to MDEQ at the same time such Deliverable is due to the EPA.

11. EPA Action on Deliverables. After review of any Deliverable that is required to be submitted pursuant to this Consent Decree, the EPA, after consultation with MDEQ, shall in writing:

a. approve the submission;

b. approve the submission upon specified conditions;

c. approve part of the submission and disapprove the remainder; or

d. disapprove the submission.

12. Approved Deliverables. If a Deliverable is approved by the EPA pursuant to Paragraph [REF _Ref383526396 \r \h * MERGEFORMAT], the City shall take all actions required by the Deliverable in accordance with the schedules and requirements of the Deliverable as approved. If the Deliverable is conditionally approved or approved only in part, pursuant to Paragraph [REF _Ref383526325 \r \h * MERGEFORMAT] or [REF _Ref383524967 \r \h * MERGEFORMAT], the City shall, upon written direction from the EPA, after consultation with MDEQ, take all actions required by the approved plan, report, or other item that the EPA, after consultation with MDEQ, determines are technically severable from any disapproved portions, subject to the City's right to dispute only the specified conditions or the disapproved portions, under Section [REF _Ref442169774 \w \h] of this Consent Decree (Dispute Resolution). Following the EPA approval of any Deliverable or portion thereof, such Deliverable or portion thereof so approved shall be incorporated into and become enforceable under this Consent Decree.

13. Disapproved Deliverables. If the submission is disapproved in whole or in part pursuant to Paragraph [REF _Ref383524967 \r \h * MERGEFORMAT] or [REF _Ref383524994 \r \h * MERGEFORMAT], the City shall, within thirty (30) Days or such other time as the EPA and the City agree to in writing, correct all deficiencies and resubmit to the EPA the Deliverable, or disapproved portion thereof, for approval, in accordance with Paragraphs [REF _Ref383525115 \r \h * MERGEFORMAT] and [REF _Ref383525135 \r \h * MERGEFORMAT]. If the resubmission is approved in whole or in part, the City shall proceed in accordance with Paragraph [REF _Ref383525135 \r \h * MERGEFORMAT].

14. Stipulated Penalties Accruing. Any stipulated penalties applicable to the original Deliverable, as provided in Section [REF _Ref442169823 \w \h] of this Decree, shall accrue during the thirty (30)-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the City's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

15. Resubmitted Deliverable. If a resubmitted Deliverable, or portion thereof, is disapproved in whole or in part, the EPA, after consultation with MDEQ, may again require the City to correct any deficiencies, in accordance with preceding Paragraph [REF _Ref383526531 \r \h * MERGEFORMAT], or may itself correct any deficiencies, subject to the City's right to invoke Dispute Resolution and the right of the EPA to seek stipulated penalties as provided in

preceding Paragraph [REF _Ref383526273 \r \h * MERGEFORMAT]. Upon the EPA's correction of any deficiencies, such resubmitted plan, report, or other item, or portion thereof will be incorporated into and become enforceable under this Consent Decree and shall be implemented by the City according to the approved schedule, subject to the City's right to invoke Dispute Resolution pursuant to Section [REF _Ref383525264 \r \h * MERGEFORMAT].

16. Timing of Review of Deliverables. If the EPA issues written comments and decisions on any Deliverable more than ninety (90) Days after receipt of such submission, any subsequent deadline or milestone that is dependent upon such comments or decisions shall be extended. The length of the extension shall be determined by calculating the number of Days between the EPA's receipt of the submission and the date of the EPA's written response, less ninety (90) Days. Within thirty (30) Days of the date that the City knows or should know of a deadline or milestone that the City believes is extended under this Paragraph, the City shall inform the EPA, in writing, of its belief and the amount of time the City believes the deadlines or milestones are extended. If the EPA disagrees with the City's determination that a deadline is dependent upon such comments or decisions, the EPA shall inform the City in writing. The City may dispute the EPA's conclusion regarding whether a deadline is dependent upon such comments or decisions pursuant to Section [REF _Ref387667850 \w \h] of this Consent Decree (Dispute Resolution).

17. Certification. In all Deliverables, notices, documents or reports submitted to the United States and State pursuant to this Consent Decree, the City shall, by a senior City management official, sign and certify such notices, documents and reports as follows:

> *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

VII. **COMPLIANCE REQUIREMENTS**

18. Obligation to Perform Work. No later than the Effective Date, the City shall begin to implement the Work pursuant to this Consent Decree. All Work identified in this Section [REF _Ref442169872 \w \h] shall be completed no later than one hundred ninety-six (196) ~~m~~Months after the Effective Date. All Work shall be performed using sound engineering practices to ensure that construction, management, operation and maintenance of the Sewer System complies with the CWA, including practices to improve the resilience of the Sewer System to the impacts of climate change. Sound engineering practices may include, but are not limited to, appropriate provisions of the *Handbook: Sewer System Infrastructure Analysis and*

Rehabilitation, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 2010; EPA's guidance: *Computer Tools for Sanitary Sewer System Capacity Analysis and Planning*, EPA/600/R-07/111, October 2007; the most current edition of MDEQ's *Guidance for the Design of Publicly Owned Wastewater Facilities*; EPA's *Climate Ready Water Utilities (CRWU) Initiative*, referenced at EPA 817-F-12-005, 2012; and EPA's *Climate Resilience Evaluation and Awareness Tool Version 3.0* (CREAT 3.0), referenced at EPA 815-B-16-004, May 2016 and currently at [HYPERLINK "https://www.epa.gov/crwu/build-climate-resilience-your-utility"]; and the Pump Stations evaluations shall be consistent with the *Pumping Systems* chapter of the most current version of Water Environment Federation's *Manual of Practice FD-4, Design of Wastewater and Stormwater Pumping Stations.*

19. Early Action Projects. Based on previous investigations conducted pursuant to the City's COMSWIP, the City has identified certain rehabilitation and other projects that are intended to address conditions currently causing SSOs in the WCTS and other violations alleged in the Complaint which shall be referred to as "Early Action Projects." The Early Action Projects are set forth and described on Appendix B, attached hereto and incorporated herein. The City represents that the Early Action Projects will constitute approximately three percent (3%) of the WCTS by linear foot, will contribute to the improvement of 15 SSOs, and are estimated to cost approximately $5.2 million. The City shall complete each of these Early Action Projects in accordance with the deadlines set forth in Appendix B which do not extend past December 31, 2020. Any change to this list of projects or deadlines approved by the EPA shall not constitute a material modification to this Consent Decree as set forth in Section [REF _Ref386810247 \w \h * MERGEFORMAT] (Modifications) below.

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20. Sanitary Sewer Evaluation/Rehabilitation ("SSER") Work Plan. Within nine (9) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a SSER Work Plan that provides for the continual assessment, analysis, and rehabilitation of the WCTS infrastructure to, among other things, address I/I, structural defects, and the other conditions causing, or that are likely to cause, SSOs. The SSER Work Plan shall establish procedures for setting priorities and expeditious schedules for undertaking the WCTS assessment and rehabilitation components set forth in Paragraphs [REF _Ref387045135 \w \h * MERGEFORMAT] through [REF _Ref387045172 \w \h * MERGEFORMAT], below. The City shall develop these priorities and expeditious schedules taking into consideration the nature and extent of customer complaints; flow monitoring, including flow isolation studies; location and cause of SSOs; any remedial measures already undertaken; field crew work orders; any preliminary sewer assessments; locations closer to the Leaf and Bouie Rivers; and any other relevant information. In addition, areas near surface waters that have been included on MDEQ's CWA Section 303(d) list of impaired waters for pathogens shall also receive priority by the City. Finally, the City shall also consider areas that have been identified by the EPA as potentially having environmental justice issues (minority and/or low income neighborhoods) when developing the priorities. The SSER Work Plan shall also include performance goals for each of the components of the SSER Work Plan set forth below, and procedures for analysis of the

effectiveness of completed rehabilitation. The SSER Work Plan shall include the following components:

a. Corrosion Defect Identification. The Corrosion Defect Identification component of the SSER Work Plan shall establish standard procedures for inspecting and identifying WCTS infrastructure that is either corroded or at risk of corrosion. The Corrosion Defect Identification component shall include a system for prioritizing repair of existing corrosion defects, corrosion identification forms, and procedures for a corrosion defect analysis.

b. Manhole Condition Assessment and Rehabilitation. The Manhole Condition Assessment and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the condition assessment of manholes within the WCTS. This component shall include manhole inspection forms and procedures for a manhole defect analysis. This component shall also establish a process for setting manhole rehabilitation priorities and expeditious schedules; shall establish an ongoing inventory of manhole rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

c. Flow Monitoring. The Flow Monitoring component of the SSER Work Plan shall establish procedures for initiating routine flow monitoring during dry and wet weather to support engineering analyses related to Sewer System capacity and peak flow studies. Dry weather monitoring shall be carried out so as to allow the characterization of base flows and I/I rates within the WCTS. Wet weather monitoring shall be conducted periodically during events of sufficient duration and intensity that cause significant I/I into the WCTS. The procedures shall identify the process used to establish flow monitoring locations, appropriate flow monitoring techniques, sewer cleaning associated with flow monitoring and a procedure for rainfall measurement.

d. Capacity Assessment. The Capacity Assessment component of the SSER Work Plan shall establish procedures and methodologies for assessing the wet weather capacity of the WCTS. This assessment shall include engineering analyses of the WCTS capacity derived from, but not limited to, flow monitoring data, remote monitoring equipment installed in the WCTS to monitor sewer pipe surcharge, and hydraulic modeling results where applicable. This assessment shall identify those portions of the WCTS that are expected to cause or contribute to SSOs under existing and projected average and peak flows in dry and wet weather, and the degree to which those portions of the WCTS experience or cause SSOs under current or projected future conditions.

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e. Closed Circuit Television ("CCTV") Inspection. The CCTV inspection component of the SSER Work Plan shall establish standard procedures for CCTV inspection within the WCTS to support sewer assessment and rehabilitation activities, and shall include procedures for CCTV cleaning and a process for the retention and

retrieval of CCTV inspection data.

f. Gravity Sewer Line Defect Analysis and Rehabilitation. The Gravity Sewer Line Defect Analysis component of the SSER Work Plan shall establish standard procedures for analysis of Gravity Sewer Line defects within the WCTS which may vary depending on the size of the pipe. Such procedures shall include Private Lateral investigations to identify sources of I/I to the WCTS. The Gravity Sewer Line Defect Analysis component shall establish standard defect codes, defect identification procedures and guidelines, and a standardized process for cataloging Gravity Sewer Line defects. This component shall also establish a process for setting Gravity Sewer Line rehabilitation priorities; shall establish an ongoing inventory of Gravity Sewer Line rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

g. Smoke Testing. The Smoke Testing component of the SSER Work Plan shall establish standard procedures for smoke testing of the Gravity Sewer Lines within the WCTS to identify sources of I/I, including cross connections and other unauthorized connections. Such procedures shall include Private Lateral investigations to identify sources of I/I.

h. Force Main Condition Assessment and Rehabilitation. The Force Main Condition Assessment and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the condition assessment of Force Mains within the WCTS. This component shall include inspection forms and procedures for a Force Main defect analysis. This component shall also establish a process for setting Force Main rehabilitation priorities; shall establish an ongoing inventory of Force Main rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

i. Pump Station Performance and Rehabilitation. The Pump Station Performance and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the evaluation of Pump Station performance and Pump Station adequacy within the WCTS. The Pump Station Performance and Rehabilitation component shall include:

(1) The use of pump run time meters; pump start counters; computation of Nominal Average Pump Operating Time ("NAPOT"); root cause failure analysis protocols; and appropriate remote sensing such as SCADA;

(2) The evaluation of station capacity, as described in the *Pumping Systems* chapter of the most current version of WEF's Manual of Practice FD-4, *Design of Wastewater and Stormwater Pumping Stations*;

(3) The evaluation of critical response time, defined as the time interval between activation of the high wet well level alarm and the first (1st) SSO, under peak flow conditions;

(4) The evaluation of station conditions, based upon both physical inspection and recent operating and mechanical failure history during at least the past five (5) years;

(5) The evaluation of station design and equipment, including redundancy of pumps and electrical power supply, and other equipment installed, based upon Chapter 40, *Wastewater Pumping Stations* of the most recent edition of *Recommended Standards for Wastewater Facilities* by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (commonly known as the "Ten State Standards");

(6) The evaluation of the ability of maintenance personnel to take corrective action within the critical response time calculated for each Pump Station; and

(7) A process for setting Pump Station rehabilitation priorities and expeditious schedules and an ongoing inventory of Pump Station rehabilitation, including identification of the rehabilitation techniques to be used, and an analysis of the effectiveness of completed rehabilitation.

21. Priority Areas Evaluation Report/Rehabilitation Plan. For purposes of implementing the SSER Work Plan under this Consent Decree, the City has already prioritized certain Sewersheds within the WCTS into two (2) Priority Areas for sewer assessment and rehabilitation work pursuant to the SSER Work Plan under this Consent Decree. This prioritization was based on existing information including the location and frequency of past SSOs and the other criteria set forth in Paragraph 20 above. These two (2) "Priority Areas" are shown on the maps in Appendix C, attached hereto and incorporated herein. The Priority Areas represent approximately forty-three percent (43%) of the WCTS by linear foot. The City shall complete the assessment of Priority Area 1 pursuant to the SSER Work Plan on or before thirty-two (32) Months after the Effective Date. The City shall complete the assessment of Priority Area 2 pursuant to the SSER Work Plan on or before forty-five (45) Months after the Effective Date. Within three (3) Months after completion of the assessment of a Priority Area as set forth above pursuant to the SSER Work Plan, the City shall submit to the EPA for review and approval a Priority Area Evaluation Report/Rehabilitation Plan setting forth the results of the assessment for that Priority Area and proposed rehabilitative and corrective actions and schedules in order to meet objectives of this Consent Decree. Upon approval by the EPA, the City shall implement the remedial measures in the approved Rehabilitation Plan portion of this submittal in accordance with the schedule contained therein.

a. Priority Area Evaluation Report. The Priority Area Evaluation Report portion of this submittal shall include, at a minimum, the following:

(1) A thorough analysis of historical and current flow monitoring, inspection, rainfall and other data, including data collected during the evaluation of the Priority Area;

(2) Identification of areas with Excessive I/I, such that these conditions are causing and/or contributing to SSOs and/or Prohibited Bypasses at a WWTP;

(3) Identification of sources of I/I within the Priority Area, if identifiable, by manhole/line segment, street address, type (Infiltration or Inflow), source (e.g., "wall leakage"), and estimated flow from the source;

(4) Identification of cross-connections between the WCTS and the City's municipal separate storm sewer system;

(5) Identification and quantification of SSOs, including all potential SSOs identified pursuant to implementation of the SSER Work Plan;

(6) A summary of activities undertaken to configure the Hydraulic Model for the Priority Area and certification that the Hydraulic Model is capable of performing those functions identified in Paragraph [REF _Ref387045491 \w \h * MERGEFORMAT], below;

(7) A summary of activities undertaken to calibrate the Hydraulic Model and certification that the Hydraulic Model has been calibrated (including the performance of sensitivity analyses) and verified using actual system data (e.g., flow data) from permanent and temporary sewage flow monitoring points in the WCTS (this certification shall include a description of the methodology, data collected, and results of the Hydraulic Model calibrations and verifications);

(8) Identification of portions of the WCTS within the Priority Area in which physical degradation is causing or contributing to SSOs;

(9) Results of average and peak daily dry and wet weather flow measurements;

(10) A determination of maximum Infiltration rate during periods of

high ground water (in gpd/inch diameter-mile);

(11) A determination of maximum hourly Inflow rate during wet weather for various storm durations and intensities (in gpd/inch diameter-mile);

(12) A determination of peaking factors for the Priority Area (the ratio of measured peak flow to average dry weather flow as measured through the duration of the evaluation);

(13) A summary of flow monitoring activities, to include, at a minimum, a map showing the location and type of each flow meter, problems encountered and deviations from the SSER Work Plan, and a description of flow monitor calibration activities, including any scatter graphs and calibration and verification graphs;

(14) A summary of field investigative activities performed to include, at a minimum: type of activity; number of activities performed (e.g., "100 out of 500 manholes inspected"), observations made under each activity (inspection procedure), and summaries of the results;

(15) A summary of the structural defects identified in the WCTS in the Priority Area to include, at a minimum: number of each type of defect by line segment, manhole number or street address, and estimates of peak flow or impact on WCTS capacity (as appropriate) from defects in each line segment, based on a consistently applied set of stated criteria as set forth in the SSER Work Plan;

(16) A summary of the technical approach utilized in carrying out the capacity assessment analyses outlined in Paragraph [REF _Ref479061436 \w \h] above;

(17) A detailed description of any deviations from the capacity assessment outlined in Paragraph [REF _Ref479061436 \w \h] above, including a discussion of the reasons for such deviation;

(18) Identification of all portions of the WCTS within the Priority Area with insufficient capacity (pursuant to Paragraph [REF _Ref479061436 \w \h] above and as identified by the Hydraulic Model of a Major Gravity Line, Pump Station or other structure) to convey peak flows without experiencing surcharge sufficient to cause a SSO under either projected peak flows or projected average

conditions or both;

(19) A description of future projected flows;

(20) Information on the predicted (e.g. Manning equation) and actual peak flow capacity of all Major Gravity Lines (by segment), all Force Mains, siphons, and Pump Stations;

(21) Summaries of the number and footage of sewer segments surcharged, and the number of structures at which a SSO might be expected to occur under each condition investigated;

(22) Mapping for each condition investigated, illustrating each pipe segment operating in surcharge, and each manhole or structure at which a SSO might be expected to occur;

(23) Information regarding the Pump Station evaluation as required by Paragraph [REF _Ref387045172 \w \h * MERGEFORMAT] above;

(24) The results of the capacity assessment as required by Paragraph [REF _Ref479061436 \w \h] above; and

(25) A summary of any capital projects implemented since commencement of the SSER Work Plan.

b. Rehabilitation Plan. The Rehabilitation Plan portion of this submittal shall include, at a minimum, the following:

(1) Identification of specific measures and schedules that, when implemented, will result in adequate capacity in the WCTS within the Priority Area to collect, convey and treat anticipated peak flows, without SSOs or Prohibited Bypasses at a WWTP;

(2) Identification of the degree to which sources of Excessive I/I shall be removed, and the degree to which Excessive I/I removal is expected to alleviate capacity constraints, and propose specific remedial measures and schedules that will address those capacity limitations not expected to be addressed by Excessive I/I removal (anticipated I/I removal rates used in the development of the Rehabilitation Plan shall reflect current industry practice);

(3) Identification of specific remedial measures and schedules to address capacity limitations that may also include increases in Pump Station and sewer line capacity, construction of storage or

equalization basin facilities, or increases in WWTP capacity;

(4) Identification of all measures and schedules necessary to eliminate all cross-connections between the WCTS and the City's municipal separate storm sewer system;

(5) Identification of all measures and schedules necessary to eliminate all SSOs caused by physical degradation of sewers, inadequate Pump Station capacities, or inadequate Pump Station reliability;

(6) Prioritized schedules for remedial measures based upon likely relative human health and environmental impact risks, SSO frequencies, and SSO volumes;

(7) A description of the methodology used to apply the prioritization factors in Paragraph [REF _Ref387217846 \w \h * MERGEFORMAT] above;

(8) Estimated capital, operations and maintenance, and present value costs for each identified remedial measure in consistent, year-specific dollars;

(9) Identification of the dates for preliminary design, complete design, complete permitting, contract award, construction commencement, and construction completion dates for each measure proposed; and

(10) An expeditious schedule such that design, construction, and placement in service of all proposed measures shall be completed within one hundred fifty-six (156) Months after the Effective Date of this Consent Decree for Priority Area 1; and within one hundred ninety-two (192) Months after the Effective Date of this Consent Decree for Priority Area 2.

22. Priority Areas Rehabilitation Report. Within four (4) Months after completion of all remedial measures set forth in a Rehabilitation Plan for a particular Priority Area, the City shall submit to the EPA for review and approval a Rehabilitation Report summarizing the implementation of the Rehabilitation Plan. Such summary shall include, at a minimum, the following:

a. Identification of specific measures taken to achieve, and an analysis of whether such measures resulted in, adequate capacity in the WCTS within the Priority Area to collect and convey and treat anticipated peak flows, without SSOs or Prohibited Bypasses at a WWTP;

b. An analysis of the degree to which sources of Excessive I/I were removed,

and the degree to which Excessive I/I removal alleviated capacity constraints; and

c. Identification of all measures taken to eliminate, and an analysis of whether such measures resulted in the elimination of, all cross-connections and SSOs caused by physical degradation of sewers, inadequate Pump Station capacities, or inadequate Pump Station reliability.

23. Capacity, Management, Operations and Maintenance Programs. The City shall develop and implement the Capacity, Management, Operations and Maintenance ("CMOM") programs as provided below. All CMOM programs shall be developed in accordance with EPA Region 4 CMOM guidance, attached hereto and incorporated herein as Appendix D. The City shall ensure that each CMOM program has a written, defined purpose; a written, defined goal; is documented in writing with specific detail; is implemented by trained personnel; has established performance measures; and has written procedures for periodic review. The Parties recognize that the City may need or want to revise the CMOM Programs set forth below during the term of this Consent Decree. Such revisions shall not be considered modifications to the Consent Decree for purposes of Section [REF _Ref387059130 \w \h * MERGEFORMAT] (Modification). The City must obtain the EPA's prior written approval of any revision to the substance of any CMOM Program required by this Consent Decree and shall place copies of any such revised Program in the PDR in accordance with the provisions of Section [REF _Ref387059293 \w \h * MERGEFORMAT]. The City may make non-substantive changes to any CMOM Program required by this Consent Decree without the EPA's approval and shall provide a copy of any revised Program to the EPA and MDEQ, and place a copy of any such revised Program in the PDR within seven (7) Days after making such revision.

a. Sewer Overflow Response Plan ("SORP"). Within twelve (12) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a SORP that will establish timely and effective methods and means of responding to, cleaning up, and/or minimizing the impact of SSOs; timely reporting of the location, volume, cause, impact, and other pertinent SSO information to the appropriate regulatory agencies; and timely and effective notification of SSOs to potentially impacted public. At minimum, the SORP shall include and provide for the following:

(1) Within twenty-four (24) hours of the time the City first becomes aware of a SSO to waters of the United States or the State or of a SSO that will endanger public health or the environment, the City shall provide in an oral report to MDEQ the location of the SSO by street address or any other appropriate method (e.g. ~~i.e.~~, latitude-longitude). The oral report shall be given to MDEQ through calling (601) 961-5682.

(2) Within five (5) days of the time the City first becomes aware of a SSO to waters of the United States or the State or of a SSO that

will endanger public health or the environment, the City shall also provide a written report to MDEQ for the SSO. The City shall maintain a copy of any written reports prepared pursuant to this Paragraph for a period of not less than five (5) years from the date of the SSO. The written report shall contain the following:

(a) The location of the SSO by street address, or any other appropriate method (e.g.~~i.e.~~, latitude-longitude);

(b) The estimated date and time when the SSO began and stopped, or if it is still an active SSO, the anticipated time to stop the SSO;

(c) The steps taken to respond to the SSO;

(d) The name of the receiving water, if applicable;

(e) An estimate of the volume (in gallons) of sewage spilled;

(f) A description of the WCTS component from which the SSO was released (such as manhole, crack in pipe, Pump Station wet well or constructed overflow pipe);

(g) Subject to available information, an estimate of the SSO's impact on public health and to water quality in the receiving water body;

(h) The cause or suspected cause of the SSO;

(i) The date of the last SSO at the same point;

(j) The steps taken or to be taken to reduce, prevent, or eliminate, reoccurrence of the SSO;

(k) A list of all notifications to the public and other agencies or departments; and

(l) The steps taken or to be taken to clean up any surfaces that have been in contact and/or contaminated by the SSO.

(3) Procedures for documenting and reporting SSOs based on demonstrable evidence that a SSO occurred regardless of whether City personnel directly witnessed the SSO occurring.

(4) The City shall maintain for all SSOs for a period of not less than five (5) years from the date of the SSO all records documenting the steps that have been and will be taken to prevent the SSO from recurring, including work order records associated with investigation and repair activities related to the SSO. The City shall also maintain for a period of not less than five (5) years from the date of the SSO a list and description of complaints from customers or others regarding the SSO.

(5) The SORP shall provide procedures for responding to all SSOs to minimize the environmental impact and potential human health risk of SSOs. At a minimum, such response procedures shall include:

(a) A detailed description of the actions the City will undertake to immediately provide notice to the public when appropriate (through the local news media or other means including signs or barricades to restrict access) of a SSO;

(b) A detailed description of the actions the City will undertake to provide notice to appropriate federal, state or local agencies/authorities;

(c) A detailed plan (including the development of response standard operating procedures) to minimize the volume of untreated wastewater transmitted to the portion of the WCTS impacted by the events precipitating the SSO to minimize overflow volumes;

(d) A particular description of the City's response to Building Backups, including the timeframe for responses and the measures to be taken to clean up Building Backups found to be caused by conditions in the City's Sewer System, including procedures necessary to disinfect and/or remove items potentially contaminated by Building Backups such as 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 and other appropriate measures to disinfect and/or remove items potentially contaminated by Building Backups; and a description of the City's follow-up process to ensure adequacy of cleanup;

(e) A detailed plan of the resources to be used to correct or repair the condition causing or contributing to the SSO;

(f) A detailed plan to ensure the preparedness, including response training of City employees and personnel of other affected agencies, necessary for the effective implementation of the SORP in the event of a SSO and establishing procedures and providing adequate training to response personnel for estimating SSO volumes;

(g) A list of those SSO locations within the area of the WCTS served by each Pump Station that have been recorded as overflowing more than once within the previous twelve (12) month period and/or those locations at which a SSO is likely to occur first in the event of a Pump Station failure; and

(h) Pump Station emergency bypass/pump-around strategies, and procedures.

b. Emergency Response Plan. Within twelve (12) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval an Emergency Response Plan. The Plan shall address both routine and catastrophic emergencies. Routine emergencies include such situations as overflowing manholes, line breaks, localized electrical failure and Pump Station outages. Catastrophic emergencies include floods, tornados, earthquakes or other natural events, serious chemical spills and widespread electrical failure. The Plan shall address areas of vulnerability and determine the effect of such a failure to operations, equipment and public safety and health based upon such factors as topography, weather, sewer system size, and other site specific factors. The Plan shall include standard forms. The Plan shall have the following components:

(1) The WWTP component of the Emergency Response Plan shall establish standard operating procedures for use in emergency situations, including changes in process controls.

(2) The WCTS component of the Emergency Response Plan shall establish standard operating procedures for use in emergency operations, including identification of the actions staff should take in the event of emergency situations (specific to the type of emergency that could occur); criteria for initiating and ceasing emergency operations; identification of appropriate repair equipment and sources thereof; and instructions on how to operate equipment and systems during an emergency when they are not functioning as intended but are not fully inoperable.

(3) In addition to the reporting requirements set forth in Section [REF _Ref386811409 \w \h * MERGEFORMAT] (Reporting Requirements), the City shall establish, in coordination with Public Health Authorities:

(a) Criteria to be used as the basis for immediately notifying the public and other impacted entities, such as users with a downstream water intake, of an emergency situation caused by a SSO, Prohibited Bypass, or effluent limit violation;

(b) A list identifying, by name, phone number and pager number, all the City staff who are responsible for notifying the public;

(c) A list identifying, by name and phone number, all Public Contacts, including local media outlets, who must be contacted during an emergency situation;

(d) A list identifying the City staff who are authorized to make public statements during emergency situations; and

(e) Pre-scripted news releases for various types of emergency situations.

(4) In addition to the notification requirements set forth in the NPDES Permits, and the reporting requirements set forth in Section [REF _Ref386811440 \w \h * MERGEFORMAT] (Reporting Requirements), the City shall establish, in coordination with Public Health Authorities:

(a) Criteria to be used as the basis for immediately notifying regulatory authorities, MDEQ, the City and the Public Health Authorities of any emergency situation caused by a SSO, Prohibited Bypass, or effluent limit violation;

(b) A list identifying, by name, phone number and pager number, all the City staff who are responsible for notifying the regulatory authorities;

(c) A list identifying, by name and phone number, all officials who must be contacted; and

(d) Standard reporting forms.

c. Information Management System ("IMS") Program. Within forty-eight

(48) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, an IMS Program, as more particularly described below. At a minimum, the IMS Program shall include the following:

(1) A management IMS component to provide City managers with guidance and instruction to adequately evaluate operations, maintenance, customer service, and Sewer System rehabilitation activities so that overall Sewer System performance can be determined and utility planning can be conducted. This IMS component shall utilize management reports and standard management forms.

(2) An operations IMS component to provide City managers and field supervisors with guidance to adequately track scheduled operational activities and to enhance operational performance. This IMS component shall utilize operating reports and standard operation forms used by field personnel and shall provide for field supervisor review.

(3) A maintenance IMS component to provide City managers and field supervisors with guidance to adequately track scheduled maintenance activities and to enhance maintenance performance. This IMS component shall utilize maintenance reports and standard maintenance forms used by field personnel. The system shall provide for field supervisor review.

(4) A description of what information will be fed into the system, how it will be entered and by what means it will be recorded.

(5) A description of the management reports that will be generated from the input data (i.e., work reports), including examples and periodicity for review of such reports.

(6) A description of the work reports that will be prepared and submitted, including examples and periodicity for review of such reports.

(7) Standard forms that will be used by both field personnel and management for the Program, where applicable.

(8) A detailed description of how the records will be maintained.

(9) If computer software will be utilized, a description of the software to be used with cited references for software training and

procedures for utilizing the software.

(10) Implementation of a Geographic Information Systems ("GIS") map of its entire WCTS on or before twenty-eight (28) Months after the Effective Date of this Consent Decree. Specifically, the City shall implement improvements to its current GIS as follows:

(a) An updated GIS database to include all as-builts and Active As-built Supplemental Information System ("AAS IS") forms, including new and corrected asset attribute data;

(b) Streamlining of the GIS data entry process for new assets, including electronic as-built data and necessary standards so that all new assets are added to the GIS system within ninety (90) calendar days of their activation in the field. Included shall be the development of a system to interface with the City WCTS hydraulic computer model so that the information can be efficiently exported to the WCTS hydraulic computer model;

(c) Simplification of the AAS IS process to facilitate wider usage;

(d) Development of a "flagging process" for damage investigators to note GIS inaccuracies;

(e) Provision for additional GIS training and refresher training;

(f) Use of online access to GIS maps to facilitate more widespread access to GIS resources to remote staff; and

(g) Determination via suitable as-built drawings, or GPS or traditional surveying field measurements, elevations of all manhole rim elevations and sewer inverts at connections to manholes and Pump Stations and their inclusion into GIS.

(11) Development and implementation of performance indicators to provide City managers with guidance to adequately evaluate data collected in the IMS for use in determining the condition of the Sewer System and an evaluation of the City's CMOM programs. Performance indicators shall include, without limitation, the linear footage of Gravity Sewer Line and Force Main inspections, the linear footage of Gravity Sewers cleaned, the number of manholes inspected, the number of manholes cleaned/maintained, the number

of inverted siphons inspected, the number of inverted siphons cleaned/maintained, the number of SSOs per mile of Gravity Sewer, the number of SSOs per mile of Force Main, the number of SSOs per Pump Station, per capita wastewater flow, NPDES Permit effluent compliance and such other performance indicators as the City may suggest and the EPA approves.

(12) Maintenance activity tracked by type (corrective, preventative, and emergency).

d. Sewer System Hydraulic Model. The City shall develop and maintain a calibrated hydraulic model of its Sewer System ("the Model") to establish existing hydraulic conditions and plan for future capacity needs of the Sewer System. The Model shall be developed concurrent with the sewer assessment and rehabilitation schedule for the initial assessment of the Priority Areas within the WCTS in Paragraph [REF _Ref387217918 \w \h * MERGEFORMAT] above. The model development schedule will be established based on system attribute data collected as part of the Sewer Mapping Program described in Paragraph [REF _Ref387217960 \w \h * MERGEFORMAT] below and flow and rainfall data collected as part of the flow monitoring program described in Paragraph [REF _Ref387217984 \w \h * MERGEFORMAT] above.

(1) At a minimum, the Model shall be capable of:

(a) Accurately predicting the flow rate and hydraulic grade line of wastewater in Force Mains from Major Pump Stations and the Major Gravity Sewer Lines under any historical dry or wet weather condition;

(b) Accurately predicting the location and severity of SSOs from the WCTS under any historical dry or wet weather condition;

(c) Fully dynamic temporal analysis, including an accounting of downstream backwater impacts on upstream flows;

(d) Accurately predicting the impacts of changes to Pump Station capacities on upstream and downstream flow rates and hydraulic grade lines, including hydraulic losses which may result from either full or partial Pump Station failures; and

(e) Generating hydrographs depicting baseline wastewater flow and I/I for the Sewer System for various storm recurrence intervals. The Model shall include methods for accurately estimating the baseline wastewater flows and I/I components in each Sewershed using quality-controlled flow data obtained for the

Sewer System.

(2) At a minimum, the City shall employ the Model to:

(a) Assist with the development and implementation of operation and maintenance procedures that optimize collection and transmission capacity;

(b) Evaluate the impacts which Infiltration/Inflow rehabilitation projects, proposed system modifications, and upgrades and expansions have on collection and transmission capacity and the performance of the City's Sewer System;

(c) Prioritize the continuing evaluation of the WCTS pursuant to the sewer assessment and rehabilitation in Paragraphs [REF _Ref387218022 \w \h * MERGEFORMAT] and [REF _Ref387217918 \w \h * MERGEFORMAT] above;

(d) Prioritize rehabilitation projects; and

(e) Implement the Capacity Assurance Program described in Paragraph [REF _Ref387218080 \w \h * MERGEFORMAT] below.

(3) The City shall develop and employ written procedures, protocols, and schedules to routinely perform:

(a) Calibrations of the Model to account for age-related and other changes to Sewer System hydraulics, and to obtain and manage updated data from physical field observations and measurements for this purpose;

(b) Verification of the Model's accuracy and performance; and

(c) Sensitivity analyses to determine how the Model responds to changes in input parameters and variables.

(4) Eight (8) Months after the ~~Effective Date of this Consent Decree and~~ implementation of the Mapping Program of Paragraph [REF _Ref387217960 \w \h * MERGEFORMAT] below, the City shall submit a report ("Model Report") to the EPA which:

(a) Identifies the functional attributes, characteristics, and limitations specific to the Model's software as compared to other

products evaluated by the City, and explains how the Model meets the capabilities required in Paragraph [REF _Ref387218158 \w \h * MERGEFORMAT] above;

(b) Identifies the date that the Model was deemed to be calibrated and functional;

(c) Identifies all input and output parameters, constants, and assumed values used by the Model;

(d) Explains the bases for the input parameters used in each Sewershed to characterize baseline wastewater flows and I/I, the quality assurance procedures used in acquiring the input data, and the engineering bases for the selections of constants (e.g., friction factors) and assumed values; and

(e) Provides a brief description of each procedure and protocol developed pursuant to Paragraph [REF _Ref387218213 \w \h * MERGEFORMAT] above, provides the associated schedules, and identifies the individual(s) with their qualifications who are employed to implement the procedures and protocols.

(5) Following receipt of the Model Report, the EPA and MDEQ may conduct compliance audits of the capabilities of the Model, the implementation of the Model, and the use of written procedures and protocols as required by this Paragraph.

e. Sewer Mapping Program. Within twenty-eight (28) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Sewer Mapping Program to update its Sewer System maps and update the capabilities and procedures for utilization of the City's future Geographic Information System ("GIS") map of the City's WCTS. At minimum, the Sewer Mapping Program shall:

(1) Enable the City to produce maps of the WCTS using GIS technology;

(2) Be designed in such a manner so as to allow electronic integration with the City's computer-based collection system model and computer-based operations and maintenance information management system;

(3) Enable the City to produce maps showing the location of all manholes, Gravity Sewer Lines, Pump Stations, Force Mains,

valves, inverted siphons and the WWTPs;

(4) Enable the City to produce maps capable of integrating electronically the locations of sewer service connections on lines that are televised;

(5) Enable the City to produce maps that include attribute data for the City's WCTS including, but not limited to, size, material, estimated age or age range, slope, invert elevation, and rim elevation;

(6) Enable the City to produce maps that delineate the spatial boundaries of all Sewersheds within the WCTS;

(7) Enable the City to produce maps that can integrate electronically available maps that show the location of surface streets and street addresses, permitted Fats, Oils and Grease ("FOG"; see Paragraph [REF _Ref387221731 \w \h]) customers, surface water bodies and political boundaries;

(8) Enable the City to produce maps in a manner that will allow use by all Sewer System operation and maintenance crew leaders in the field;

(9) Allow entry and mapping of work orders to identify and track problems geographically such as stoppages, service interruptions, and SSOs, and to assist in the planning and scheduling of maintenance;

(10) Include written standard operating procedures for use of the program, the acquisition and entry of updated mapping data for new assets or changes to existing assets, and updates to system software;

(11) Include locations of each permitted FOG establishment; and

(12) Include a schedule for the completion of the electronic mapping of each Sewershed in the City's WCTS.

f. Gravity Sewer System Operations and Maintenance Program. Within twenty-four (24) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Gravity Sewer System Operations and Maintenance Program to address SSOs, particularly those caused by FOG, roots and/or debris obstructions. At a minimum, the Gravity Sewer System Operations and Maintenance Program shall include the following:

(1) Written preventative operations and maintenance schedules and procedures which shall be scheduled appropriately and shall include, but not be limited to, written procedures for the following:

(a) Inspection and maintenance of all Gravity Sewers, manholes and inverted siphons;

(b) Identifying and documenting Gravity Sewer, manhole and inverted siphon conditions, including grease, roots, and/or debris accumulation;

(c) Identifying maintenance needs; and

(d) Scheduling preventative maintenance work/cleaning which the City may schedule in connection with the SSER Work Plan as described in Paragraph [REF _Ref387218022 \w \h * MERGEFORMAT] above.

(2) An engineering evaluation of potential sulfide and corrosion control options and a summary report of findings, including a recommendation of the preferred sulfide and corrosion control method(s); provided, however, that such corrosion control options and methods shall not apply to components made of plastic or other similar materials.

(3) Prioritization for evaluating the Gravity Sewers based upon the size of the pipe (e.g., starting with the larger pipes and work back to smaller pipes), location of SSOs, community input or other criteria the City finds appropriate.

(4) Inspection of Gravity Sewers, manholes, and inverted siphon easements, including inspection of creek crossings, canal crossings, stream bank encroachment toward Gravity Sewers, manholes and inverted siphons, and easement accessibility (including the need to control vegetative growth or encroachment of man-made structures or activities that could threaten the integrity of the affected Gravity Sewer, manhole, or inverted siphon). Inspections shall include written reports, and where appropriate, representative photographs or videos of appurtenances being inspected (Gravity Sewers, manholes, inverted siphons, creek crossings, canal crossings, etc.). Inspectors shall promptly report any observed SSOs to their area supervisors and shall record any evidence of SSOs which may have occurred since the last inspection. Any observed SSO shall be promptly reported in accordance with the SORP.

(5) A schedule for the maintenance of easements.

(6) A staffing and funding plan sufficient in structure, skills, numbers and funding to allow completion of the operation and maintenance activities required by this Paragraph [REF _Ref387218300 \w \h * MERGEFORMAT].

(7) Data attributes for the City's mapping program allowing program data to be compared in the City's IMS against other pertinent data such as the occurrence of SSOs, including repeat SSO locations and permit violations.

(8) An inventory management system that includes:

(a) A list of critical equipment and critical spare parts;

(b) A list of where critical spare parts and critical equipment may be secured to allow repairs in a reasonable amount of time for those spare parts and critical equipment that are not stored by the City, including spare pipe having a diameter of [24 inches] or greater; the list shall also set forth an inventory of spare parts and critical equipment stored by the City, as applicable; and

(c) Written procedures for updating the critical spare parts and equipment inventories in the IMS.

(9) Reports which list equipment problems and the status of work orders generated during the prior Month.

g. Pump Station Operations and Preventative Maintenance Program. Within twenty-one (21) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Pump Station Operations and Preventative Maintenance Program to facilitate proper operation and maintenance activities associated with the Pump Stations within the WCTS. At a minimum, the Pump Station Operations and Preventative Maintenance Program shall include the following:

(1) Identification of the means and modes of communication between Pump Stations, field crews, and supervising staff.

(2) Technical specifications of each Pump Station within the WCTS.

(3) A description of each Pump Station monitoring system which shall continuously monitor, report, and transmit information for each Pump Station.

(4) Written preventative operations and maintenance schedules and procedures which shall be scheduled appropriately and shall include, but not be limited to, written procedures for periodic service and calibration of instrumentation such as flow meters, liquid level sensors, alarm systems, elapsed time meters, and remote monitoring equipment. Such written preventative operations and maintenance schedules and procedures shall also include predictive (including non-physical inspections) and/or physical inspection and service for all Pump Stations including, but not limited to:

(a) Reading, recording and maintaining records of information from the elapsed time meters and pump start counters;

(b) Observing and documenting wet well conditions, including grease and/or debris accumulation;

(c) Checking and re-setting, as necessary to improve system performance, wet well pumping points (e.g., floats);

(d) Checking, recording and maintaining records of system pressure(s);

(e) Checking SCADA and/or alarm components;

(f) Checking stand-by power sources;

(g) Checking motor electrical system, including, but not limited to, line voltage on each leg quarterly, current draw on each leg quarterly, and resistance of windings on each leg quarterly; and

(h) Identifying maintenance needs.

(5) Written standard emergency/reactive operations and maintenance procedures. The City may use portable pumps, portable generators or alternative power sources as it deems appropriate. At a minimum, the standard emergency/reactive Pump Station operating procedures shall include:

(a) Criteria used to determine the need for emergency operations and maintenance;

(b) Initiation/use of stand-by power (e.g., portable generators), where applicable;

(c) Initiation/use of portable pump (e.g., bypass/pump-around operations), where applicable;

(d) Evaluation of the need for additional equipment for emergency/reactive operations, including, but not limited to, additional portable generators and/or additional portable pumps (for pump-around operations);

(e) Evaluation of the need for on-site standby power (e.g., on-site generator and/or second electrical feed from the power grid) for each Pump Station should the City choose, not to have a portable pump available for the Pump Station; and

(f) Establishing standard forms, reporting procedures and performance measures for emergency/reactive operations and maintenance.

(6) An inventory management system that includes:

(a) A list of critical equipment and critical spare parts;

(b) A list of where critical spare parts and critical equipment may be secured to allow repairs in a reasonable amount of time for those spare parts and critical equipment that are not stored by the City; the list shall also set forth an inventory of spare parts and critical equipment stored by the City, as applicable; and

(c) Written procedures for updating the critical spare parts and equipment inventories in the IMS.

(7) Reports which list equipment problems and the status of work orders generated during the prior Month.

(8) A staffing and funding plan sufficient in structure, skills, numbers and funding to allow completion of the operations and maintenance activities required by this Paragraph [REF _Ref387218349 \w \h * MERGEFORMAT].

h. Fats, Oils and Grease ("FOG") Control Program. Within eighteen (18) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a FOG Control Program. At a minimum, the FOG Control Program shall apply City-wide and include the following:

(1) A FOG characterization study that shall identify the sources of FOG causing problems in the WCTS and the most appropriate

method or mechanism for addressing those sources.

(2) The legal authority to control the discharge of FOG into the WCTS, including the ability to implement a permit and enforcement program for commercial and industrial sources.

(3) Specification of accepted devices to control the discharge of FOG into the WCTS.

(4) Establishment of standards for the design and construction of FOG control devices including standards for capacity and accessibility, site map, design documents and as-built drawings.

(5) Establishment of FOG control device management, operations and maintenance standards, or best management practices, that address onsite record keeping requirements, cleaning frequency, cleaning standards, use of additives, and ultimate disposal.

(6) Establishment of construction inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements, to assure that FOG control devices are constructed in accordance with established design and construction standards.

(7) Establishment of compliance inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements to assure that FOG control devices are being managed, operated and maintained in accordance with the established management, operation and maintenance standards or best management practices.

(8) Establishment of a FOG disposal manifest system, with the included requirements that FOG and septage not be comingled and that the point of origin be specified on the manifest.

(9) Establishment of an enforcement program, including specific enforcement mechanisms, to ensure compliance with the FOG Control Program.

(10) Establishment of a compliance assistance program to facilitate training of FOG generators and their employees.

(11) Establishment of a comprehensive public education program directed at reducing the amount of FOG entering the WCTS from residences.

(12) Establishment of staffing (technical and legal) and equipment requirements to ensure effective implementation of the FOG Control Program.

(13) A regularly maintained list of current commercial establishment FOG generators including a description of their FOG generating processes and estimated average quantity of FOG generated daily.

(14) Establishment of performance indicators to be used by the City to measure the effectiveness of the FOG Control Program.

(15) A schedule to review, evaluate and revise the FOG Control Program on at least an annual basis. Any revisions to the FOG Control Program shall be submitted to the EPA in accordance with Paragraphs [REF _Ref387218411 \w \h * MERGEFORMAT] through [REF _Ref387218427 \w \h * MERGEFORMAT] and [REF _Ref387218452 \w \h * MERGEFORMAT] of this Consent Decree.

Within six (6) Months after the EPA's approval of the FOG Control Program, the City shall enact the necessary City ordinances for the immediate implementation of the Program. After the ordinances become effective as provided by State law, the City shall implement the FOG Control Program, which shall be incorporated into, and become enforceable under, this Consent Decree.

i. Capacity Assurance Program. Within thirty-six (36) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Capacity Assurance Program ("CAP"), including a schedule for full implementation of the program not to exceed forty-eight (48) Months after the Effective Date. Pursuant to the capacity assessment performed in accordance with Paragraphs [REF _Ref387218022 \w \h * MERGEFORMAT] and [REF _Ref387217918 \w \h * MERGEFORMAT] above, the CAP shall identify any portion of the Sewer System with insufficient capacity under either peak wet weather, or average conditions, or both. It shall also analyze all portions of the WCTS that hydraulically impact all known SSOs and all components of a WWTP that may contribute to violations of the NPDES Permits. The CAP shall assess peak flow capacity of all Pump Stations, all Major Sewer Gravity Lines, all Force Mains and siphons and their respective related appurtenances, all known SSO locations, and any other portions of the WCTS that must be assessed so as to allow a technically-sound evaluation of the causes of SSOs and Prohibited Bypasses at a WWTP for existing and proposed flows. The CAP shall enable the City to authorize new sewer service connections, or increases in flow from existing sewer service connections, only after the City certifies that the analysis procedures contained in the approved CAP have been used and that the City has determined, based on those procedures, that there is Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate

Collection Capacity as set forth below. The Capacity Assurance Program shall include, at a minimum, the following:

(1) The technical information, methodology, and analytical techniques, including the model or software, to be used by the City to calculate collection, transmission, and treatment capacity.

(2) The means by which the City will integrate its certification of Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity with the issuance of building permits by the City and the City's acquisition of new or existing sewers from other owners.

(3) The means by which the City will integrate its certification of Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity with the requirements of Mississippi Commission on Environmental Quality Regulation 11 Miss. Admin. Code Part 6, Ch.1, Rule 1.1.1.C(1)(b) and Rule 1.1.6.B(2) and B(4), regarding the certification of capacity for the construction of new sewer lines that provide new flow into the City's Sewer System.

(4) The technical information, methodology, and analytical techniques, including the model or software, to be used by the City to calculate the net (cumulative) increase or decrease in volume of wastewater introduced to the WCTS as a result of the City's authorization of new sewer service connections and increases in flow from existing connections and the completion of: (i) specific projects that add or restore collection or transmission capacity to the WCTS or add or restore adequate treatment capacity at a WWTP as required by 40 C.F.R. § 133 ("Capacity Enhancing Projects"), (ii) specific projects that reduce peak flow through removal of I/I ("I/I Projects"), and (iii) permanent removal of sewer connections ("Removal of Connections").

(5) An Information Management System capable of tracking the accumulation of banked credits, earned pursuant to Paragraph [REF _Ref387218542 \w \h * MERGEFORMAT] below, from completion of Capacity Enhancing Projects, I/I Projects and Removal of Connections; the capacity-limited portion of the Sewershed in which those credits were earned; and the expenditure of such credits on future increases in flow from new or existing sewer service connections in that capacity-limited portion of the Sewershed.

(6) All evaluation protocols to be used to calculate collection, transmission, and treatment capacity including, but not limited to, standard design flow rate rules of thumb regarding pipe roughness, manhole head losses, as-built drawing accuracy (distance and slope), water use (gallons per capita per day), projected flow impact calculation techniques, and metering of related existing peak flows (flows metered in support of analysis and/or manual observation of existing peak flows). The City may identify sewer line segments which have been specifically designed and constructed to operate under surcharge conditions (e.g., with welded or bolted joints) and identify the level of surcharge for those segments.

(7) Capacity Certifications. Except as provided in Paragraphs [REF _Ref387218643 \w \h * MERGEFORMAT] through [REF _Ref387218698 \w \h * MERGEFORMAT] below, the City shall implement the CAP by authorizing a new sewer service connection, or additional flow from an existing sewer service connection, only after it certifies that the analysis procedures contained in the CAP have been used and that the City has determined, based on those procedures, that there is Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity as defined below:

(a) Treatment Capacity Certifications. The City's certification of "Adequate Treatment Capacity" shall confirm that, at the time a WWTP receives the flow from a proposed sewer service connection(s) or increased flow from an existing sewer service connection(s), when combined with the flow predicted to occur from all other authorized sewer service connections (including those which have not begun to discharge into the WCTS), the WWTP will not be in "non-compliance" for quarterly reporting as defined in 40 C.F.R. Part 123.45, Appendix A. In addition, the City's certification of "Adequate Treatment Capacity" shall confirm that the new or increased flow to a WWTP will not result in a Prohibited Bypass.

(b) Transmission Capacity Certifications. The City's certification of "Adequate Transmission Capacity" shall confirm that each Pump Station, through which the proposed additional flow from new or existing sewer service connections would pass to the WWTP receiving such flow, has the capacity to transmit, with its largest pump out of service, the existing one (1) hour peak flow passing through the Pump Station, plus the addition to the existing

one (1) hour peak flow predicted to occur from the proposed connection, plus the addition to the existing one (1) hour peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the WCTS.

(c) Collection Capacity Certifications. The City's certification of "Adequate Collection Capacity" shall confirm that each Major Gravity Line, through which the proposed additional flow from new or existing connections would pass, has the capacity to carry the existing one (1) hour peak flow passing through the Major Gravity Line, plus the addition to the existing one (1) hour peak flow from the proposed connection, plus the addition to the existing one (1) hour peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the WCTS without causing a Surcharge Condition.

(d) Definition of "One (1) Hour Peak Flow" and "Surcharge Condition." The terms set forth below are defined herein only for purposes of implementation of the CAP. The City agrees that it shall not use these definitions for purposes of establishing any design criteria for the implementation of rehabilitation measures to the Sewer System. The term "one (1) hour peak flow" shall mean the greatest flow in a sewer averaged over a sixty (60) minute period at a specific location expected to occur as a result of a representative 2 year-24 hour storm event. The term "Surcharge Condition" shall mean the condition that exists when the supply of wastewater resulting from the one (1) hour peak flow is greater than the capacity of the pipes to carry it and the surface of the wastewater in manholes rises to an elevation greater than twenty-four (24) inches above the top of the pipe or within three (3) feet of the rim of the manhole, and the sewer is under pressure or head, rather than at atmospheric pressure, unless the City has, pursuant to Paragraph [REF _Ref387221235 \w \h * MERGEFORMAT] above, identified that pipe segment and manhole as designed to operate in that condition, in which case the identified level of surcharge will be used.

(8) Minor Sewer Connections. For minor sewer service connections, the City may elect to perform a monthly capacity analysis for each Sewershed by certifying that the Sewershed has adequate capacity, as defined above, to carry existing peak flows and the additional flows generated by all such minor sewer service connections projected to be approved in the subsequent month. For any

Sewershed which can be so certified, the City may approve these projected minor sewer service connections without performing individual certifications for each connection. For the purposes of this Paragraph only, a "minor sewer service connection" is a connection with an average flow not to exceed 2,500 gallons per day.

(9) Capacity for Treatment, Transmission, and Collection in Lieu of Certification. The City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot satisfy the requirements of Paragraph [REF _Ref387221283 \w \h * MERGEFORMAT] above, provided the City certifies that all of the following provisions, where applicable, are satisfied:

(a) The City is in substantial compliance with this Consent Decree;

(b) The sewer lines which will convey the proposed additional flow from new or existing sewer service connections have not experienced dry weather SSOs due to inadequate capacity within the previous twelve (12) Months; or, in the alternative, the causes of any dry weather SSOs due to inadequate capacity have been eliminated;

(c) The City has identified the sewer line segment(s), Pump Station(s) and/or wastewater treatment systems that do not meet the conditions for certification of Adequate Treatment Capacity, Adequate Collection Capacity, and/or Adequate Transmission Capacity;

(d) The City shall complete, prior to the time the proposed additional flow from new or existing sewer service connections is introduced into the WCTS, specific Capacity Enhancing Projects, I/I Projects, and/or Removal of Connections which will add sewer capacity or reduce peak flows to the identified sewer line segment(s), Pump Station(s), and wastewater treatment system(s) in accordance with the factors set forth in Paragraphs [REF _Ref387221348 \w \h * MERGEFORMAT] and [REF _Ref387221388 \w \h * MERGEFORMAT] below;

(e) Where the City has undertaken specific Capacity Enhancing Projects that provide for additional off-line storage or additional treatment capacity, and/or specific Removal of

Connections to satisfy the requirements of Paragraph [REF _Ref387221430 \w \h * MERGEFORMAT] above, the estimated added capacity resulting from such projects must be equal to or greater than the estimated amount of any proposed additional flow;

(f) Where the City has undertaken specific I/I Projects or Capacity Enhancing Projects, other than those that provide for additional off-line storage or additional treatment capacity, to satisfy the requirements of Paragraph [REF _Ref387221430 \w \h * MERGEFORMAT] above, the estimated reduction in peak flows or added capacity resulting from such projects must exceed the estimated amount of any proposed additional flow by a factor of 3:1;

(g) Commencing within twelve (12) Months after the EPA's approval of the CAP and annually thereafter, the City has performed a review of specific Capacity Enhancing Projects and I/I Projects undertaken to determine if actual added capacity and peak flow reductions are in line with what the City originally estimated for such projects; and the City has used the results of this review to adjust future estimates as necessary;

(h) Any new sewer service connection or increase in flow to an existing connection authorized prior to the completion of a necessary added capacity or peak flow reduction project as set forth above shall be conditioned upon completion of such project prior to the time that the new sewer service connection or flow increase is introduced into the WCTS; and

(i) In implementing the provisions of this Paragraph [REF _Ref387218542 \w \h], the City may use a "banking credit system" for the sewer line segment(s), Pump Station(s), and/or wastewater treatment systems for which the City is not able to satisfy the conditions set forth in Paragraph [REF _Ref387221283 \w \h * MERGEFORMAT] above. The addition of sewer capacity and/or reduction in peak flows to the affected sewer line segment, Pump Station, or wastewater treatment system from (i) the completed sanitary sewer projects set forth on Appendix A, (ii) the Early Action Projects set forth on Appendix B, and/or (iii) Capacity Enhancement Projects, I/I Projects, and Removal of Connections completed after the Effective Date of this Consent Decree may be accumulated in the form of credits in the banking credit system in accordance with the factors set forth in Paragraphs [REF _Ref387221348 \w \h] and [REF _Ref387221388 \w \h].

above. Such credits may then be used for authorization of future sewer service connections or increases in flow from existing connections to the affected sewer line segment, Pump Station, or wastewater treatment system in the capacity-limited portion of the Sewershed. Increases in flow from all authorized new sewer service connections or increases in flow from existing connections occurring between the Effective Date of this Consent Decree and when the City begins full implementation of the CAP shall be deducted from any such accumulated credits in the banking credit system.

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(10) Essential Services. Notwithstanding the above provisions, the City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot certify that it has Adequate Transmission Capacity, Adequate Collection Capacity, and/or Adequate Treatment Capacity as defined above for health care facilities, public safety facilities, and public schools and, subject to the EPA review and approval, for government facilities; and in those cases where a pollution or sanitary nuisance condition exists, as determined by the local county health department or its regulatory successor, as the result of a discharge of untreated wastewater from an on-site septic tank.

(11) Existing Illicit Connections. Notwithstanding the provisions above, the City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot certify that it has Adequate Transmission Capacity and/or Adequate Collection Capacity and/or Adequate Treatment Capacity as defined above, for any illicit connections to the municipal separate storm sewer system ("MS4") which would otherwise result in the discharge of municipal sewage to waters of the State.

(12) Certifications. All certifications pursuant to this Paragraph [REF _Ref387218080 \w \h * MERGEFORMAT] shall be made by a professional engineer registered in the State of Mississippi and shall be approved by a responsible party of the City as defined by 40 C.F.R. § 122.22(b). The City shall maintain all such certifications, and all data on which the certifications are based, in its offices for inspection by the EPA and MDEQ. The EPA and MDEQ may request, and the City shall provide, any and all documentation necessary to support any certification made by the City pursuant to this Paragraph [REF _Ref387218080 \w \h *

MERGEFORMAT], and make available, to the extent possible, individuals providing such certifications to meet with the EPA and MDEQ.

j. Training Program. Within thirty-two (32) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a Training Program, including a schedule for full implementation of the program not to exceed twelve (12) Months after its approval by the EPA. The Training Program shall include, at a minimum, the following:

(1) Technical Training. The technical training component shall include, at a minimum, the following:

(a) Employee technical training and refresher technical training requirements (curriculum) that ensure that each City employee has a level of knowledge, commensurate with duties, of the overall functions of the City's infrastructure;

(b) A description of outside technical training and networking opportunities, such as conferences and seminars, that are made available to City employees;

(c) A description of the extent to which employee certification, at the State or at the City level, is required as a basis for obtaining or maintaining a position;

(d) Records of technical training, including on-the-job training, which shall be maintained in an information management system and shall describe the degree to which completed technical training and on-the-job training is tied to promotion and pay; and

(e) A description of the technical training required before an employee can undertake specific work assignments or tasks.

(2) Skills Training. The skills training component shall include, at a minimum, the following:

(a) Employee skills training and refresher skills training requirements (curriculum) that ensure that each City employee has a level of knowledge, commensurate with duties, of the specific equipment to be used and the procedures to be followed in carrying out duties;

(b) A description of outside skills training opportunities, such as manufacturers' training, that are made available to

employees;

(c) A description of the extent to which employee certification, at the State or at the City level, is required as a basis for obtaining or maintaining a position;

(d) Records of skills training, including on-the-job training, which shall be maintained in an information management system) and shall describe the degree to which completed skills training and on-the-job training is tied to promotion and pay; and

(e) A description of the skills and on-the-job training required before an employee can undertake specific work assignments or tasks.

(3) Safety Training. The safety training component shall include, at a minimum, the following:

(a) Employee safety training and refresher safety training requirements (curriculum) that ensure that each City employee has level of knowledge regarding on-the-job safety that is commensurate with the employee's equipment and work environment;

(b) A description of the extent to which employee safety certification at the State or at the City level is required as a basis for obtaining or maintaining a position;

(c) Records of safety training, including on-the-job training, which shall be maintained in an information management system and shall describe the degree to which completed safety training and on-the-job training is tied to promotion and pay; and

(d) A description of the safety training required before an employee can undertake specific work assignments or tasks.

k. [Chronic SSO Advanced /Remote Monitoring] Program. Within sixteen (16) Months after the Effective Date of this Consent Decree, the City shall install and maintain manhole and/or sewer surcharge level remote monitoring devices at the SSO locations identified on Appendix F, attached hereto and incorporated herein.

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(1) After this initial sixteen (16)-Month period, the City shall on a quarterly basis determine whether any SSO location in the WCTS experienced more than one (1) wet-weather related SSO in the previous twelve (12)-month period. The City shall then install and

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maintain manhole and/or sewer surcharge level remote monitoring devices at such SSO locations within four (4) Months after making such determination.

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(2) -The remote monitoring devices shall monitor sewer surcharge levels and shall be designed to send to the City real-time alerts of a likely SSO event or events when specified thresholds are attained and/or exceeded, thereby improving the City's responsiveness to SSOs and sewer operations with the goal of preventing SSOs from occurring at these SSO locations. Within fourteen (14) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval its proposal for the thresholds for the remote monitoring devices that will trigger real-time alerts of a likely SSO event or events once those thresholds are attained and/or exceeded.

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(3) The City shall expeditiously inspect the SSO location(s) after a remote monitoring device indicates that the specified thresholds have been attained and/or exceeded at the SSO location(s). The City shall keep records with respect to all remote monitoring devices and SSO locations for a period of at least five (5) years. The City shall report all surcharge conditions identified by the remote monitoring devices in the Quarterly Report pursuant to Paragraph [REF _Ref485825796 \w \h] of this Consent Decree. The City shall report all SSOs discovered pursuant to the remote monitoring devices in accordance with the NPDES Permits, the SORP and the Quarterly and Annual Reports pursuant to Paragraphs [REF _Ref485825796 \w \h], and [REF _Ref485634140 \w \h] of this Consent Decree.

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(4) The City shall maintain these remote monitoring devices required by this Paragraph until such time as the City can demonstrate to the EPA that the cause of the SSO at a particular location has been appropriately addressed. The City may, however, reduce the number of remote monitoring devices if it can demonstrate to the EPA that SSO locations are related in such a manner that a single remote monitoring device can provide the required real-time alert for likely SSOs at multiple locations. If the City elects to monitor multiple SSO locations through a single remote monitoring device, the City shall expeditiously inspect all such related SSO locations when the remote monitoring device indicates that the specified thresholds have been attained and/or exceeded. The City shall also evaluate the benefits of this technology and other remote wastewater detection technologies for continued use within the

WCTS to increase efficiency in SSO prevention/response and to enhance hydraulic modeling efforts.

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24. Permits. Where any compliance obligation under this Section requires the City to obtain a federal, state, or local permit or approval, the City shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The City may seek relief under the provisions of Section [REF _Ref322450615 \r \h * MERGEFORMAT] (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the City has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VIII. CIVIL PENALTY

25. Within thirty (30) Days after the Effective Date, the City shall pay the sum of $165,6~~0~~00 as a civil penalty as follows: $82,8~~5~~00 to the United States and $82,8~~5~~00 to the State.

26. The City shall pay the civil penalty due to the United States either by use of https://www.pay.gov to the U.S. Department of Justice account, or by FedWire Electronic Funds Transfer ("EFT"), in accordance with instructions provided to the City by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Southern District of Mississippi after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which the City shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

~~*[Insert name, address, phone number, and email address of the individual who will be responsible for making the payment]*~~Mayor, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501
mayor@hattiesburgms.com

on behalf of the City. The City may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and the EPA in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT] (Notices). At the time of payment, the City shall send notice that payment has been made: (i) to the EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at the EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT]; and (iii) to the EPA in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT]. Such notice shall reference the CDCS Number and DOJ case number 90-5-1-1-10964. In the

event that full cash payment to the United States is not made within thirty (30) Days of the Effective Date, the City shall also pay to the United States interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

27. The City shall pay the civil penalty due to MDEQ by check payable to the "Mississippi Department of Environmental Quality." The check shall reference the case name and civil action number herein and shall be sent to: Mississippi Department of Environmental Quality, Attn: Jennifer Parish, P.O. Box 2339 Jackson, Mississippi 39225. In the event that full cash payment to MDEQ is not made within thirty (30) Days of the Effective Date, the City shall also pay to MDEQ interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT

28. The City shall satisfactorily implement and complete the Supplemental Environmental Project ("SEP") in accordance with all provisions of Appendix E of this Consent Decree. The SEP shall be completed in accordance with the schedule set forth in Appendix E.

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29. As more particularly described in Appendix E, the SEP shall consist of projects to reduce extraneous flows entering the WCTS through defective private laterals and through illicit connections from residential properties the owners of which face financial hardship as determined under Section B of Appendix E-. The total expenditure for the SEP shall be not less than $220,800, exclusive of certain costs detailed in Section C of Appendix E. The City may use contractors or consultants in planning and implementing the SEP.

30. With regard to the SEP, the City certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the City in good faith estimates that the cost to implement the SEP is $220,800.

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

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

d. That the City has not received and will not receive credit for the SEP in any other enforcement action.

e. That the City will not receive any reimbursement for any portion of the SEP from any other person.

f. That the City is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP and that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could fund the same activity as the SEP. For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, federal loan, or federally-guaranteed loan, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

31. "Satisfactory completion" of the SEP shall include the completion of a minimum number of forty-five (45) repairs or replacements of defective private laterals or removals of illicit connections, and a minimum expenditure of $220,800 of eligible SEP costs.

32. SEP Completion Report. Within thirty (30) Days after the date set for completion of the SEP, the City shall submit a SEP Completion Report to the EPA for review and approval. The SEP Completion Report shall contain all of the following information:

a. A detailed description of the SEP as implemented.

b. A description of any problems encountered in completing the SEP and the solutions thereto.

c. An itemized list of all eligible SEP costs expended.

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree.

e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

33. The EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate the City's SEP Completion Report.

34. After receiving the SEP Completion Report, the EPA shall notify the City whether or not the City has satisfactorily completed the SEP. If the City has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section [REF _Ref475015844 \w \h] of this Consent Decree.

35. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section [REF _Ref405378877 \w \h] of this Decree

(Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

36. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph [REF _Ref387046011 \w \h].

37. Any public statement, oral or written, in print, film, or other media, made by the City making reference to the SEP under this Decree from the date of its execution of this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States et al. v. City of Hattiesburg, taken on behalf of the U.S. Environmental Protection Agency and the Mississippi Department of Environmental Quality to enforce the Clean Water Act and the Mississippi Air and Water Pollution Control Law."

X. REPORTING REQUIREMENTS

38. The City shall submit the following reports:

a. Quarterly Reports. Beginning one (1) Month after the first Calendar Quarter following the Effective Date of this Consent Decree, and one (1) Month after each subsequent Calendar Quarter thereafter until termination of the Consent Decree, the City shall submit to the EPA for review and approval a Quarterly Report that shall include the date, time, location, source, estimated duration, estimated volume, receiving water (if any), and cause of all SSOs occurring in the applicable three (3)-Month period in a tabulated electronic format. Beginning sixteen (16) Months after the Effective Date of this Consent Decree, each Quarterly Report shall also (i) indicate whether a reported SSO experienced more than one (1) wet-weather related SSO event in the previous twelve (12)-month period and (ii) include information on all surcharge conditions identified by the remote monitoring devices as required pursuant to Paragraph [REF _Ref485890386 \w \h] of this Consent Decree.

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b. Semi-Annual Reports. Beginning one (1) Month after the first two (2) Calendar Quarters following the Effective Date of this Consent Decree, and one (1) Month after each subsequent two (2) Calendar Quarters until termination of the Consent Decree, the City shall submit to the EPA for review and approval a Semi-Annual Report. Each Semi-Annual Report shall include, at a minimum:

(1) A description of projects and activities completed and milestones achieved during the previous applicable six (6)-Month period pursuant to the requirements of this Consent Decree, in Gantt chart or similar format, including a description of the status of

compliance or non-compliance with the requirements of this Consent Decree and, if applicable, the reasons for non-compliance. If any non-compliance cannot be fully explained at the time the report is due, the City shall include a statement to that effect in the report. The City shall investigate to determine the cause of the non-compliance and then shall submit an amendment to the report, including a full explanation of the cause of the non-compliance, within thirty (30) Days after submission of the Semi-Annual Report.

(2) A summary of significant projects and activities anticipated to be performed, and milestones anticipated to be achieved, in the successive applicable six (6)-Month period to comply with the requirements of this Consent Decree, in Gantt chart or similar format.

(3) Any additional information the City determines is appropriate to demonstrate that the City is implementing the remedial actions required under this Consent Decree in an adequate and timely manner.

c. Annual Reports. Beginning two (2) Months after the first full Calendar Year, and two (2) Months after each subsequent Calendar Year until termination of this Consent Decree, the City shall submit to the EPA for review and approval an Annual Report. Each Annual Report shall cover the most recent applicable Calendar Year and shall include, at a minimum:

(1) A summary of the CMOM Programs implemented or modified pursuant to this Consent Decree, including a comparison of actual performance with any performance measures that have been established.

(2) A trends analysis of the number, volume, duration, and cause of the City's SSOs for the previous two Calendar Years updated to reflect the SSOs that occurred during the previous twelve (12)-Month period except that the first Annual Report shall only include the first twelve (12) Months.

39. Except as otherwise provided in the SORP or ERP, whenever any violation of this Consent Decree or any other event affecting the City's performance under this Consent Decree or its NPDES Permits may pose an immediate threat to the public health or welfare or the environment, the City shall notify, pursuant to Section [REF _Ref463351858 \n \h] (Notices), the EPA and MDEQ orally or by electronic or facsimile transmission as soon as possible, but no

later than twenty-four (24) hours after the City first knew of the violation or event. This procedure is in addition to the requirements set forth in Paragraph [REF _Ref405368543 \w \h].

40. All reports shall be submitted to the persons designated in Section [REF _Ref322450461 \r \h * MERGEFORMAT] (Notices).

41. Each report by the City under this Section shall be submitted in accordance with the provisions of Paragraph [REF _Ref387046011 \w \h * MERGEFORMAT] of this Consent Decree. The certification requirement in Paragraph [REF _Ref387046011 \w \h * MERGEFORMAT] does not apply to emergency or similar notifications where compliance would be impractical, including notifications required under Paragraph [REF _Ref405368992 \w \h].

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

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

XI. **STIPULATED PENALTIES**

44. The City shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section [REF _Ref322450784 \r \h * MERGEFORMAT] (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

45. Late Payment of Civil Penalty. If the City fails to pay the civil penalty required to be paid under Section [REF _Ref322450322 \r \h * MERGEFORMAT] (Civil Penalty) when due, the City shall pay a stipulated penalty of $1,000 per Day for each Day that the payment is late.

46. The following stipulated penalties shall accrue for each violation identified below:

a. SSOs Reaching Waters. For each SSO that reaches waters of the United States or the State, a stipulated penalty may be assessed as follows:

If SSO Occurs in:	Penalty Per Violation Per Day:
Calendar Years 2019-2021	$500
Calendar Years 2022 until Termination	$1,000

b. Failure to Timely Submit Deliverable. For each day the City fails to Timely submit any Deliverable, a stipulated penalty for each such Deliverable may be assessed as follows:

Period of Noncompliance:	Penalty Per Deliverable Per Day:
1-30 days	$500
31-60 days	$1,000
More than 60 days	$2,000

c. Failure to Timely Implement Work. For each day the City fails to Timely implement any Work, daily stipulated penalties may be assessed for each such item of Work as follows:

Period of Noncompliance:	Penalty Per Violation Per Day:
1-30 days	$500
31-60 days	$1,000
61 days -180 days	$2,000
More than 180 days	$5,000

d. Failure to Timely Report SSOs. For each SSO that the City fails to Timely report in a Quarterly Report as set forth in Paragraph [REF _Ref470788139 \w \h] of this Consent Decree, a stipulated penalty of $5,000 may be assessed.

e. Failure to Timely Implement SEP Milestones. For each Day the City fails to Timely implement a SEP milestone set forth in Section [REF _Ref475018243 \w \h] or Appendix E, daily stipulated penalties may be assessed as follows:

Period of Noncompliance:	Penalty Per Violation Per Day:
1-30 days	$500
31-60 days	$1,000

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f. Failure to satisfactorily complete the SEP. For the SEP identified in Section [REF _Ref474768983 \w \h] and Appendix E, if the City fails to satisfactory complete the SEP as described, a stipulated penalty of $242,880, minus any creditable expenditures as determined by the EPA, and minus any stipulated penalties already paid under Paragraph 46.e, may be assessed.

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

48. The City shall pay any stipulated penalty within thirty (30) Days of receiving a United States' written demand. The City shall pay fifty (50) percent of the total stipulated penalty amount due to the United States and fifty (50) percent to the State.

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

50. Stipulated penalties shall continue to accrue as provided in Paragraph [REF _Ref324245385 \r \h * MERGEFORMAT], 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 the EPA, after consultation with MDEQ, and is not appealed to the Court, the City shall pay accrued penalties determined to be owing, together with interest, within thirty (30) Days of the effective date of the agreement or the receipt of the EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the City 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, the City shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

51. The City shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph [REF _Ref324245444 \r \h * MERGEFORMAT], except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. The City shall pay stipulated penalties owing to the State in the manner set forth in Paragraph [REF _Ref383433461 \w \h * MERGEFORMAT].

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

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

54. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section [REF _Ref322450868 \r \h * MERGEFORMAT] (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for the City's violation of this Decree or applicable law, including but not limited to an action against the City for statutory penalties, additional injunctive relief, mitigation or offset measures,[ADVANCE \l0][ADVANCE \d0] and/or contempt.[ADVANCE \l0] However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

XII. **FORCE MAJEURE**

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

56. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the City shall provide notice orally or by electronic or facsimile transmission to the EPA and MDEQ, within 72 hours of when the City first knew that the event might cause a delay. Within seven (7) days thereafter, the City shall provide in writing to the EPA and MDEQ an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the City's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The City shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the City from asserting any claim of force

majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The City shall be deemed to know of any circumstance of which the City, any entity controlled by the City, or the City's contractors knew or should have known.

57. If the EPA, after a reasonable opportunity for review and comment by MDEQ, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the EPA, after a reasonable opportunity for review and comment by MDEQ, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

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

59. If the City elects to invoke the dispute resolution procedures set forth in Section [REF _Ref322450892 \r \h * MERGEFORMAT] (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of the EPA's notice. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs [REF _Ref324245533 \r \h * MERGEFORMAT] and [REF _Ref324245536 \r \h * MERGEFORMAT]. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Consent Decree identified to the EPA and the Court.

XIII. **DISPUTE RESOLUTION**

60. 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. The City's failure to seek resolution of a dispute under this Section shall preclude the City from raising any such issue as a defense to an action by the United States to enforce any obligation of the City arising under this Decree.

61. 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 the City sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement between the United States and the City. The United States

shall consult with the State during the period of informal negotiations. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below.

62. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State 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 City's position and any supporting documentation relied upon by the City.

63. The United States shall serve its Statement of Position within sixty (60) Days of receipt of the City's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. If within five (5) Days of receiving the United States' Statement of Position, the City requests to confer, the United States agrees to confer (in person or by telephone) with the City, but such a conference shall be concluded no later than twenty-one (21) Days after the issuance of the United States' Statement of Position. Within fourteen (14) Days after the conclusion of the conference, the United States will either reaffirm its Statement of Position or issue an amended Statement of Position. If the United States fails to either reaffirm or amend its Statement of Position within this fourteen (14) Day period, its Statement of Position shall be deemed reaffirmed. The United States' Statement of Position shall be binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

64. The City may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section [REF _Ref322450461 \r \h * MERGEFORMAT] (Notices), a motion requesting judicial resolution of the dispute. If the City did not request to confer with the United States pursuant to preceding Paragraph, the City's motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. If the City requested to confer with the United States pursuant to the preceding Paragraph, the City's motion must be filed within ten (10) Days after the expiration of the fourteen (14) Day period following the conference during which the United States either reaffirms or amends its Statement of Position. The motion shall contain a written statement of the City's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

65. The United States shall respond to the City's motion within the time period allowed by the Local Rules of this Court. The United States shall consult with the State during preparation of its response. The City may file a reply memorandum, to the extent permitted by the Local Rules.

66. Standard of Review. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph [REF _Ref324245586 \n \h], the City shall bear the burden of demonstrating that its position complies with this Consent Decree and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and that it must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

67. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the City under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph [REF _Ref324245630 \r \h * MERGEFORMAT]. If the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section [REF _Ref322450920 \r \h * MERGEFORMAT] (Stipulated Penalties).

XIV. **INFORMATION COLLECTION AND RETENTION**

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

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;

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

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

e. assess the City's compliance with this Consent Decree.

69. Upon request, the City shall provide the EPA and MDEQ or their authorized representatives splits of any samples taken by the City. Upon request, the EPA and MDEQ shall provide the City splits of any samples taken by the EPA or MDEQ.

70. Until five (5) years after the termination of this Consent Decree, the City shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to the City's performance of its obligations under this Consent Decree. This information-retention

requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, the City shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

71. At the conclusion of the information-retention period provided in the preceding Paragraph, the City shall notify the United States and the State at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, the City shall deliver any such documents, records, or other information to the EPA or MDEQ. The City may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the City asserts such a privilege, it shall provide the following: (a) a title for the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the City. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

72. The City may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that the City seeks to protect as CBI under 40 C.F.R. Part 2, the City shall follow the procedures set forth in 40 C.F.R. Part 2. The City may also assert that information required to be provided under this Section is protected as "trade secrets" under Miss. Code Ann. Section 49-17-39. As to any information that the City seeks to protect as trade secrets under said Section 49-17-39, the City shall follow the procedures set forth in Section 49-17-39.

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

XV. **EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

74. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging of this Consent Decree.

75. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA, the MAWPCL, or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph [REF

_Ref324245690 \r \h * MERGEFORMAT]. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the City's Sewer System, whether related to the violations addressed in this Consent Decree or otherwise.

76. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Sewer System or the City's violations, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph [REF _Ref324245690 \r \h * MERGEFORMAT].

77. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The City is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the City's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, the MAWPCL, or with any other provisions of federal, State, or local laws, regulations, or permits.

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

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

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

81. 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.

XVI. **COSTS**

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

XVII. **NOTICES**

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

As to the United States:
By Mail:
EES Case Management Unit
Re: DJ # 90-5-1-1-10964
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

By Email:
[HYPERLINK "mailto:eescdcopy.enrd@usdoj.gov"] Re: DJ # 90-5-1-1-10964

And

Chief, NPDES Enforcement and Permitting Branch
Water Protection Division
U.S Environmental Protection Agency, Region 4
ATTN: Richard Elliott
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8691

As to the EPA:
Chief, NPDES Enforcement and Permitting Branch
Water Protection Division
U.S Environmental Protection Agency, Region 4
ATTN: Richard Elliott
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8691

As to the State/MDEQ:
Chief, Environmental Compliance and Enforcement Division
Office of Pollution Control
Mississippi Department of Environmental Quality
P.O. Box 2261
Jackson, MS 39225-2261
(601) 961-5682

As to the City:
Mayor, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501

Director of Engineering, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4540

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

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

XVIII. **EFFECTIVE DATE**

86. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIX. **RETENTION OF JURISDICTION**

87. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections [REF _Ref322450968 \r \h * MERGEFORMAT] and [REF _Ref322450984 \r \h * MERGEFORMAT], or effectuating or enforcing compliance with the terms of this Decree.

XX. **MODIFICATION**

88. Except as otherwise set forth in Paragraphs [REF _Ref383531021 \w \h * MERGEFORMAT], [REF _Ref387753848 \r \h], or [REF _Ref387753878 \w \h] of this Consent Decree, 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. Non-material changes to this Consent Decree (including appendices) may be made by written agreement of the Parties without Court approval.

89. Any disputes concerning modification of this Decree shall be resolved pursuant to Section [REF _Ref322451014 \r \h * MERGEFORMAT] (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph [REF _Ref324245744 \r \h * MERGEFORMAT], 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).

XXI. **TERMINATION**

90. This Consent Decree may be terminated when the United States determines that the City has satisfactorily completed the requirements of Section [REF _Ref322451030 \r \h * MERGEFORMAT] (Compliance Requirements), provided the City has fulfilled all other obligations of this Consent Decree, including payment of the civil penalty and any accrued stipulated penalties as required by this Consent Decree not waived or reduced by the United States. The City may serve upon the United States a Request for Termination, certifying that the City has satisfied those requirements, together with all necessary supporting documentation.

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

92. If the United States, after consultation with the State, does not agree that the Decree may be terminated, the City may invoke Dispute Resolution under Section [REF _Ref322451081 \r \h * MERGEFORMAT]. However, the City shall not seek Dispute Resolution of any dispute regarding termination until one hundred and twenty (120) Days after service of its Request for Termination.

XXII. **PUBLIC PARTICIPATION**

93. 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. The City and the State each consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the Parties in writing that it no longer supports entry of the Decree.

XXIII. **SIGNATORIES/SERVICE**

94. Each undersigned representative of the City, the State, the EPA, 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.

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

XXIV. **INTEGRATION**

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

XXV. **FINAL JUDGMENT**

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

XXVI. **APPENDICES**

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

"Appendix A" is a list of completed ~~COMSWIP~~ sewer improvement projects including COMSWIP projects;

"Appendix B" is a list of the Early Action Projects;

"Appendix C" are maps of the Priority Areas;

"Appendix D" is the EPA Region 4 guidance on Capacity, Management, Operation, and Maintenance ("CMOM") programs;

"Appendix E" is the Supplemental Environmental Project, and

"Appendix F" is the list of SSOs for the initial monitoring devices.

Dated and entered this __ day of _____, 201_

_____
UNITED STATES DISTRICT JUDGE
Southern District of Mississippi

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE UNITED STATES OF AMERICA:

_____

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

_____

VALERIE K. MANN
DC Bar No. 440744
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611
Telephone: 202/616-8756
Facsimile: 202/616-2427
Email: Valerie.mann@usdoj.gov

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

United States Attorney
Southern District of Mississippi

_____

Assistant United States Attorney
Southern District of Mississippi
501 East Court Street
Suite 4.430
Jackson, Mississippi 39201

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

_____
MARY J. WILKES
Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Of Counsel:
WILLIAM B. BUSH, JR.
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, GA 30303

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

_____
MARK POLLINS
Division Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

_____
LOREN DENTON
Branch Chief
Municipal Enforcement Branch
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

_____
ROBERT D. FENTRESS
Attorney-Advisor
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi:

FOR PLAINTIFF STATE OF MISSISSIPPI BY AND THROUGH THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY AND THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY:

_____

GRETCHEN L. ZMITROVICH
MS Bar No. 101470
Senior Attorney
Office of Pollution Control
Mississippi Department of Environmental Quality
P.O. Box 2261
Jackson, MS 39225
Telephone: 601/961-5050
Facsimile: 601/961-5674
Email: GZMITROVICH@mdeq.ms.gov [HYPERLINK "mailto:Gretchen_Zmitrovich@mdeq.ms.gov"]

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi:

FOR THE CITY OF HATTIESBURG:

_____

MAYOR ~~JOHNNY L. DUPREE~~TOBY BARKER
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501

June 19~~April 4~~, 2017 Draft. Fed. R. Evid. 408 Material - For Settlement Purposes Only. Subject to approval by appropriate officials at DOJ, EPA, MDEQ, and City of Hattiesburg.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED STATES OF AMERICA and The STATE OF MISSISSIPPI, Plaintiffs, v. The CITY OF HATTIESBURG, MISSISSIPPI, Defendant.	)))))))))))	Case No. CONSENT DECREE

TABLE OF CONTENTS

[TOC \O "1-3"]

I. INTRODUCTION

A. WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (the "EPA"), has filed a complaint concurrently with this Consent Decree, alleging that Defendant, the City of Hattiesburg, Mississippi (the "City"), has violated and continues to violate Section 301 of the Clean Water Act ("CWA"), 33 U.S.C. § 1311, and terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") permits issued under Section 402 of the CWA, 33 U.S.C. § 1342; and seeking injunctive relief and civil penalties pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d);

B. WHEREAS, Plaintiff the State of Mississippi, acting through the Mississippi Commission on Environmental Quality and the Mississippi Department of Environmental Quality ("MDEQ") (collectively, the "State"), joined in the Complaint and seeks injunctive relief and civil penalties for the City's alleged violations of the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1, *et seq.* ("MAWPCL");

C. WHEREAS, the State is also a Plaintiff in this action and is joined as a party under Section 309(e) of the CWA, 33 U.S.C. § 1319(e), which requires the state in which a municipality is located to be joined as a party whenever the municipality is a party to a civil action brought by the United States under Section 309 of the CWA;

D. WHEREAS, the State has been authorized by the EPA to administer the NPDES program in Mississippi pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b);

E. WHEREAS, the City is a "municipality" pursuant to Section 502 of the CWA, 33 U.S.C. § 1362;

F. WHEREAS, the City's Wastewater Collection and Transmission System ("WCTS") transports wastewater to the City's two wastewater treatment plants, the Hattiesburg South Wastewater Treatment Plant ("South Lagoon") and the Hattiesburg North Wastewater Treatment Plant ("North Lagoon");

G. WHEREAS, the South Lagoon and its related WCTS are regulated pursuant to NPDES Permit number MS0020303, and the North Lagoon and its related WCTS are regulated pursuant to NPDES Permit number MS0020826;

H. WHEREAS, the Mississippi Commission on Environmental Quality and the City have entered into Agreed Order No. 6034 11, dated October 5, 2011, as amended on February 13, 2012, August 12, 2014, and December 7, 2016, regarding the compliance issue of wastewater discharges from the South Lagoon and the North Lagoon under the NPDES Permits referenced in Paragraph G above;

I. WHEREAS, the EPA and the State have determined, based upon information provided

by the City, that the City has had hundreds of -unauthorized Sanitary Sewer Overflows ("SSOs") since January 1, 2012;

J. WHEREAS, the City represents that based on previous investigations conducted pursuant to the City's Comprehensive Sewer and Water Investment Project ("COMSWIP"), the City identified and completed within the past several years certain sanitary sewer projects costing approximately $15.5 million including several projects to address conditions that caused SSOs in the WCTS. Such completed sanitary sewer projects are more particularly described and depicted on a map as set forth on Appendix A, attached hereto and incorporated herein;

Commented [MV1]: This dollar estimate may change if Appendix A changes.

K. WHEREAS EPA and the State have determined that the City has no effective system of SSO reporting or record-keeping, and has thus failed to comply with the reporting requirements of its NPDES Permits;

L. WHEREAS, the United States and the State contend that these SSOs and reporting failures are violations of the CWA, MAWPCL, and the City's NPDES Permits;

M. WHEREAS, the City does not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint;

N. 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 between the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section [REF _Ref322450365 \r \h * MERGEFORMAT]I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. This Court has supplemental jurisdiction over the state law claims asserted by the State pursuant to 28 U.S.C. § 1367. 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) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and the City conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, the City consents to the Court's jurisdiction over this Decree, over any such action, and over the City and consents to venue in this judicial district.

2. For purposes of this Consent Decree, the City agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), and Miss. Code Ann. § 49-17-29 and § 49-17-43.

III. APPLICABILITY

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

4. No transfer of ownership or operation of any portion of the Sewer System, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of the Decree are implemented. At least thirty (30) Days prior to such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States and MDEQ, in accordance with Section [REF _Ref322450400 \r \h * MERGEFORMAT] (Notices). Any attempt to transfer ownership or operation of the Sewer System without complying with this Paragraph constitutes a violation of this Decree.

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

6. In any action to enforce this Consent Decree, the City 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.

IV. OBJECTIVES

7. All plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing the City to achieve and maintain full compliance with the CWA and the MAWPCL, including the goal of eliminating all Sanitary Sewer Overflows.

V. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA (including, without limitation, those terms defined in Section 502 of the CWA, 33 U.S.C § 1362, and at 40 C.F.R. § 122.2) shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Building Backup" shall mean a wastewater release or backup into a building that is caused by blockages, flow conditions, or other malfunctions in the Wastewater Collection and Transmission System. A wastewater backup or release that is

caused by blockages, flow conditions, or other malfunctions of a portion of a Private Lateral located on private property outside of the City's right-of-way or easement is not a Building Backup.

b. "Calendar Quarter" shall mean the three (3)-month periods ending on March 31, June 30, September 30, and December 31.

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

d. "Certification" or "certify" when used in this Consent Decree shall require the City to comply with Paragraph [REF _Ref387046011 \w \h] of this Consent Decree.

e. "The City" or "Defendant" shall mean the City of Hattiesburg, Mississippi, a municipal corporation, including all of its departments, agencies, instrumentalities such as the Water and Sewer Department, and any successor thereto.

f. "CMOM" or "Capacity, Management, Operations, and Maintenance" shall mean a program of accepted industry practices to properly manage, operate and maintain sanitary wastewater collection, transmission and treatment systems, investigate capacity-constrained areas of these systems, and respond to SSO events.

g. "Complaint" shall mean the complaint filed by the United States and the State in this action.

h. "COMSWIP" shall mean the City's Comprehensive Sewer and Water Investment Project.

i. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section [REF _Ref322450534 \r \h * MERGEFORMAT]). In the event of a conflict between this document and any appendix, this document shall control.

j. "CWA" shall mean the Clean Water Act, as amended, 33 U.S.C. §§ 1251, *et seq.*

k. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Southern District of Mississippi.

l. "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.

m. "Deliverable" shall mean any written document required to be prepared

and/or submitted by or on behalf of the City pursuant to this Consent Decree.

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

o. "Effective Date" shall have the definition provided in Section [REF _Ref322450432 \r \h * MERGEFORMAT].

p. "Excessive Inflow/Infiltration" or "Excessive I/I" shall have the meaning provided in 40 C.F.R. § 35.2005(b)(16).

q. "Force Main" shall mean any pipe which is owned or operated by the City 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 Line" or "Gravity Sewer" shall mean any pipe which is owned and operated by the City that receives, contains and conveys wastewater not normally under pressure, but is 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.

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.

u. "I/I" shall mean the total quantity of water from Inflow, Infiltration, and rainfall dependent Inflow and Infiltration without distinguishing the source.

v. "MAWPCL" shall mean the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq*.

w. "Major Gravity Line" shall mean any of the following:

(1) all Gravity Sewer Lines that are twelve (12) inches in diameter or larger;

(2) all Gravity Sewer Lines that convey wastewater from one pumping station service area to another pumping station service area; and

(3) all Gravity Sewer Lines that have caused or contributed, or that the

City knows will likely cause or contribute to capacity-related SSOs.

x. "Month" shall mean one (1) calendar month running from the numbered day to the same numbered day of the following calendar month, regardless of whether the particular month has 28, 29, 30 or 31 days. In the event a triggered event would occur on a day of the month which does not exist (for example, on February 30), then the event shall be due on the first day of the following month (for example, March 1).

y. "MDEQ" shall mean the Mississippi Department of Environmental Quality and the Mississippi Commission on Environmental Quality, collectively, and any successor departments or agencies of the State.

z. "NPDES" shall mean the National Pollutant Discharge Elimination System authorized under Section 402 of the CWA, 33 U.S.C. § 1342.

aa. "NPDES Permits" shall mean NPDES permit No. MS0020303 issued to the City pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the South Lagoon, and NPDES permit No. MS0020826 issued to the City pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the North Lagoon, and any future extended, modified, or reissued permits.

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

cc. "Parties" shall mean the United States of America on behalf of the EPA, the State acting through MDEQ, and the City.

dd. "Plaintiffs" shall mean the United States of America on behalf of the EPA, and the State acting through MDEQ.

ee. "Private Lateral" shall mean that portion of a sanitary sewer conveyance pipe that extends from the wastewater main to the single-family, multi-family, apartment, or other dwelling unit or commercial or industrial structure to which wastewater service is or has been provided.

ff. "Prohibited Bypass" shall mean the intentional diversion of waste streams from any portion of a treatment facility which is prohibited pursuant to the terms set forth at 40 C.F.R. § 122.41(m).

gg. "Public Document Repository" or "PDR" shall mean the Office of the City Clerk located at Hattiesburg City Hall, 200 Forrest Street, Hattiesburg, Mississippi, 39401 and the City's website, www.hattiesburgms.com.

hh. "Pump Station" shall mean facilities which are owned or operated by the

City 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 pump station.

ii. "Sanitary Sewer Overflow" or "SSO" shall mean any discharge of wastewater to waters of the United States or the State from the City's Sewer System through a point source not specified in any NPDES permit, as well as any overflow, spill, or release of wastewater to public or private property from the Sewer System that may not have reached waters of the United States or the State, including all Building Backups.

jj. "SCADA" shall mean supervisory control and data acquisition.

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

ll. "Sewershed" shall mean the subdivisions of the City's WCTS containing sewers that are primarily hydraulically linked.

mm. "Sewer System" shall mean the WCTS and the WWTPs.

nn. "State" shall mean the State of Mississippi, including all of its departments, agencies, and instrumentalities.

oo. "Timely" when applied to the submittal of a Deliverable shall mean submitted no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and containing all of the elements pertaining to the submittal as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree). "Timely" when applied to the implementation of any Work shall mean implemented no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and in accordance with the elements pertaining to such Work as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree).

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

qq. "Wastewater Collection and Transmission System" or "WCTS" shall mean the municipal wastewater collection, retention and transmission system, including all pipes, Force Mains, Gravity Sewer Lines, Pump Stations, pumps, manholes, and appurtenances thereto, which are owned or operated by the City.

rr. "Wastewater Treatment Plants" or "WWTPs" 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 include all facilities owned, managed, operated, and maintained by the City, including but not

limited to the South Lagoon and the North Lagoon, and all components of such sewage treatment plants.

ss. "Work" shall mean all activities the City is required to perform under this Consent Decree.

VI. REVIEW OF DELIVERABLES/CERTIFICATION OF DELIVERABLES

9. Public Document Repository/ Public Review Requirement. The City shall post on its website instructions for how the public can request email notices of future Deliverables. Prior to the submission of each Deliverable to the EPA and MDEQ, the City shall post a copy of the Deliverable in its PDR and provide notice of such action by email to all parties who have requested such notice. The City shall also send to the PDR, prior to the submission of each Deliverable to the EPA and MDEQ, a memorandum containing a brief synopsis of the Deliverable and instructions on how to find the Deliverable on the City's website. The City shall post on its website instructions for submitting comments, and shall allow the public a period of thirty (30) Days to comment on, the following Deliverables: (i) the Priority Areas Evaluation Report/Rehabilitation Plan required under Paragraph 21; (ii) the Sewer Overflow Response Plan required under Paragraph 23.a.; (iii) the Emergency Response Plan required under Paragraph 23.b.; the Fats, Oils and Grease Control Program required under Paragraph 23.h.; and the Capacity Assurance Program required under Paragraph 23.i. After the thirty (30)-Day comment period, the City shall consider public comments for a period of at least fifteen (15) Days before submitting the Deliverable to the EPA and MDEQ. Within seven (7) Days after submitting a Deliverable to the EPA and MDEQ, the City shall place a copy of the submitted version of the Deliverable in its PDR. Within seven (7) Days after the EPA's approval, approval contingent upon conditions, or modification by the EPA, the City shall place a copy of such final version of the Deliverable in its PDR. The City shall maintain in its PDR until termination of this Consent Decree all written comments received from the EPA and MDEQ along with all submitted versions of Deliverables.

10. Copy to MDEQ. The City shall provide a copy of any Deliverable to MDEQ at the same time such Deliverable is due to the EPA.

11. EPA Action on Deliverables. After review of any Deliverable that is required to be submitted pursuant to this Consent Decree, the EPA, after consultation with MDEQ, shall in writing:

a. approve the submission;

b. approve the submission upon specified conditions;

c. approve part of the submission and disapprove the remainder; or

d. disapprove the submission.

12. Approved Deliverables. If a Deliverable is approved by the EPA pursuant to Paragraph [REF _Ref383526396 \r \h * MERGEFORMAT], the City shall take all actions required by the Deliverable in accordance with the schedules and requirements of the Deliverable as approved. If the Deliverable is conditionally approved or approved only in part, pursuant to Paragraph [REF _Ref383526325 \r \h * MERGEFORMAT] or [REF _Ref383524967 \r \h * MERGEFORMAT], the City shall, upon written direction from the EPA, after consultation with MDEQ, take all actions required by the approved plan, report, or other item that the EPA, after consultation with MDEQ, determines are technically severable from any disapproved portions, subject to the City's right to dispute only the specified conditions or the disapproved portions, under Section [REF _Ref442169774 \w \h] of this Consent Decree (Dispute Resolution). Following the EPA approval of any Deliverable or portion thereof, such Deliverable or portion thereof so approved shall be incorporated into and become enforceable under this Consent Decree.

13. Disapproved Deliverables. If the submission is disapproved in whole or in part pursuant to Paragraph [REF _Ref383524967 \r \h * MERGEFORMAT] or [REF _Ref383524994 \r \h * MERGEFORMAT], the City shall, within thirty (30) Days or such other time as the EPA and the City agree to in writing, correct all deficiencies and resubmit to the EPA the Deliverable, or disapproved portion thereof, for approval, in accordance with Paragraphs [REF _Ref383525115 \r \h * MERGEFORMAT] and [REF _Ref383525135 \r \h * MERGEFORMAT]. If the resubmission is approved in whole or in part, the City shall proceed in accordance with Paragraph [REF _Ref383525135 \r \h * MERGEFORMAT].

14. Stipulated Penalties Accruing. Any stipulated penalties applicable to the original Deliverable, as provided in Section [REF _Ref442169823 \w \h] of this Decree, shall accrue during the thirty (30)-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the City's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

15. Resubmitted Deliverable. If a resubmitted Deliverable, or portion thereof, is disapproved in whole or in part, the EPA, after consultation with MDEQ, may again require the City to correct any deficiencies, in accordance with preceding Paragraph [REF _Ref383526531 \r \h * MERGEFORMAT], or may itself correct any deficiencies, subject to the City's right to invoke Dispute Resolution and the right of the EPA to seek stipulated penalties as provided in preceding Paragraph [REF _Ref383526273 \r \h * MERGEFORMAT]. Upon the EPA's correction of any deficiencies, such resubmitted plan, report, or other item, or portion thereof will be incorporated into and become enforceable under this Consent Decree and shall be implemented by the City according to the approved schedule, subject to the City's right to invoke Dispute Resolution pursuant to Section [REF _Ref383525264 \r \h * MERGEFORMAT].

16. Timing of Review of Deliverables. If the EPA issues written comments and decisions on any Deliverable more than ninety (90) Days after receipt of such submission, any

subsequent deadline or milestone that is dependent upon such comments or decisions shall be extended. The length of the extension shall be determined by calculating the number of Days between the EPA's receipt of the submission and the date of the EPA's written response, less ninety (90) Days. Within thirty (30) Days of the date that the City knows or should know of a deadline or milestone that the City believes is extended under this Paragraph, the City shall inform the EPA, in writing, of its belief and the amount of time the City believes the deadlines or milestones are extended. If the EPA disagrees with the City's determination that a deadline is dependent upon such comments or decisions, the EPA shall inform the City in writing. The City may dispute the EPA's conclusion regarding whether a deadline is dependent upon such comments or decisions pursuant to Section [REF _Ref387667850 \w \h] of this Consent Decree (Dispute Resolution).

17. Certification. In all Deliverables, notices, documents or reports submitted to the United States and State pursuant to this Consent Decree, the City shall, by a senior City management official, sign and certify such notices, documents and reports as follows:

> *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

VII. **COMPLIANCE REQUIREMENTS**

18. Obligation to Perform Work. No later than the Effective Date, the City shall begin to implement the Work pursuant to this Consent Decree. All Work identified in this Section [REF _Ref442169872 \w \h] shall be completed no later than one hundred ninety-six (196) months after the Effective Date. All Work shall be performed using sound engineering practices to ensure that construction, management, operation and maintenance of the Sewer System complies with the CWA, including practices to improve the resilience of the Sewer System to the impacts of climate change. Sound engineering practices may include, but are not limited to, appropriate provisions of the *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 2010; EPA's guidance: *Computer Tools for Sanitary Sewer System Capacity Analysis and Planning*, EPA/600/R-07/111, October 2007; the most current edition of MDEQ's *Guidance for the Design of Publicly Owned Wastewater Facilities*; EPA's *Climate Ready Water Utilities (CRWU) Initiative*, referenced at EPA 817-F-12-005, 2012; and EPA's *Climate Resilience Evaluation and Awareness Tool Version 3.0* (CREAT 3.0), referenced at EPA 815-B-16-004, May 2016 and currently at [HYPERLINK "https://www.epa.gov/crwu/build-climate-resilience-your-utility"]; and the Pump Stations evaluations shall be consistent with the *Pumping*

Systems chapter of the most current version of Water Environment Federation's *Manual of Practice FD-4, Design of Wastewater and Stormwater Pumping Stations.*

19. Early Action Projects. Based on previous investigations conducted pursuant to the City's COMSWIP, the City has identified certain rehabilitation and other projects that are intended to address conditions currently causing SSOs in the WCTS and other violations alleged in the Complaint which shall be referred to as "Early Action Projects." The Early Action Projects are set forth and described on Appendix B, attached hereto and incorporated herein. The City represents that the Early Action Projects will constitute approximately three percent (3%) of the WCTS by linear foot, will contribute to the improvement of 15 SSOs, and are estimated to cost approximately $5.2 million. The City shall complete each of these Early Action Projects in accordance with the deadlines set forth in Appendix B which do not extend past December 31, 2020. Any change to this list of projects or deadlines approved by the EPA shall not constitute a material modification to this Consent Decree as set forth in Section [REF _Ref386810247 \w \h * MERGEFORMAT] (Modifications) below.

20. Sanitary Sewer Evaluation/Rehabilitation ("SSER") Work Plan. Within nine (9) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a SSER Work Plan that provides for the continual assessment, analysis, and rehabilitation of the WCTS infrastructure to, among other things, address I/I, structural defects, and the other conditions causing, or that are likely to cause, SSOs. The SSER Work Plan shall establish procedures for setting priorities and expeditious schedules for undertaking the WCTS assessment and rehabilitation components set forth in Paragraphs [REF _Ref387045135 \w \h * MERGEFORMAT] through [REF _Ref387045172 \w \h * MERGEFORMAT], below. The City shall develop these priorities and expeditious schedules taking into consideration the nature and extent of customer complaints; flow monitoring, including flow isolation studies; location and cause of SSOs; any remedial measures already undertaken; field crew work orders; any preliminary sewer assessments; locations closer to the Leaf and Bouie Rivers; and any other relevant information. In addition, areas near surface waters that have been included on MDEQ's CWA Section 303(d) list of impaired waters for pathogens shall also receive priority by the City. Finally, the City shall also consider areas that have been identified by the EPA as potentially having environmental justice issues (minority and/or low income neighborhoods) when developing the priorities. The SSER Work Plan shall also include performance goals for each of the components of the SSER Work Plan set forth below, and procedures for analysis of the effectiveness of completed rehabilitation. The SSER Work Plan shall include the following components:

a. Corrosion Defect Identification. The Corrosion Defect Identification component of the SSER Work Plan shall establish standard procedures for inspecting and identifying WCTS infrastructure that is either corroded or at risk of corrosion. The Corrosion Defect Identification component shall include a system for prioritizing repair of existing corrosion defects, corrosion identification forms, and procedures for a corrosion defect analysis.

b. Manhole Condition Assessment and Rehabilitation. The Manhole Condition Assessment and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the condition assessment of manholes within the WCTS. This component shall include manhole inspection forms and procedures for a manhole defect analysis. This component shall also establish a process for setting manhole rehabilitation priorities and expeditious schedules; shall establish an ongoing inventory of manhole rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

c. Flow Monitoring. The Flow Monitoring component of the SSER Work Plan shall establish procedures for initiating routine flow monitoring during dry and wet weather to support engineering analyses related to Sewer System capacity and peak flow studies. Dry weather monitoring shall be carried out so as to allow the characterization of base flows and I/I rates within the WCTS. Wet weather monitoring shall be conducted periodically during events of sufficient duration and intensity that cause significant I/I into the WCTS. The procedures shall identify the process used to establish flow monitoring locations, appropriate flow monitoring techniques, sewer cleaning associated with flow monitoring and a procedure for rainfall measurement.

d. Capacity Assessment. The Capacity Assessment component of the SSER Work Plan shall establish procedures and methodologies for assessing the wet weather capacity of the WCTS. This assessment shall include engineering analyses of the WCTS capacity derived from, but not limited to, flow monitoring data, remote monitoring equipment installed in the WCTS to monitor sewer pipe surcharge, and hydraulic modeling results where applicable. This assessment shall identify those portions of the WCTS that are expected to cause or contribute to SSOs under existing and projected average and peak flows in dry and wet weather, and the degree to which those portions of the WCTS experience or cause SSOs under current or projected future conditions.

e. Closed Circuit Television ("CCTV") Inspection. The CCTV inspection component of the SSER Work Plan shall establish standard procedures for CCTV inspection within the WCTS to support sewer assessment and rehabilitation activities, and shall include procedures for CCTV cleaning and a process for the retention and retrieval of CCTV inspection data.

f. Gravity Sewer Line Defect Analysis and Rehabilitation. The Gravity Sewer Line Defect Analysis component of the SSER Work Plan shall establish standard procedures for analysis of Gravity Sewer Line defects within the WCTS which may vary depending on the size of the pipe. Such procedures shall include Private Lateral investigations to identify sources of I/I to the WCTS. The Gravity Sewer Line Defect Analysis component shall establish standard defect codes, defect identification procedures and guidelines, and a standardized process for cataloging Gravity Sewer Line defects. This component shall also establish a process for setting Gravity Sewer Line

rehabilitation priorities; shall establish an ongoing inventory of Gravity Sewer Line rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

g. Smoke Testing. The Smoke Testing component of the SSER Work Plan shall establish standard procedures for smoke testing of the Gravity Sewer Lines within the WCTS to identify sources of I/I, including cross connections and other unauthorized connections. Such procedures shall include Private Lateral investigations to identify sources of I/I.

h. Force Main Condition Assessment and Rehabilitation. The Force Main Condition Assessment and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the condition assessment of Force Mains within the WCTS. This component shall include inspection forms and procedures for a Force Main defect analysis. This component shall also establish a process for setting Force Main rehabilitation priorities; shall establish an ongoing inventory of Force Main rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

i. Pump Station Performance and Rehabilitation. The Pump Station Performance and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the evaluation of Pump Station performance and Pump Station adequacy within the WCTS. The Pump Station Performance and Rehabilitation component shall include:

(1) The use of pump run time meters; pump start counters; computation of Nominal Average Pump Operating Time ("NAPOT"); root cause failure analysis protocols; and appropriate remote sensing such as SCADA;

(2) The evaluation of station capacity, as described in the *Pumping Systems* chapter of the most current version of WEF's Manual of Practice FD-4, *Design of Wastewater and Stormwater Pumping Stations*;

(3) The evaluation of critical response time, defined as the time interval between activation of the high wet well level alarm and the first (1st) SSO, under peak flow conditions;

(4) The evaluation of station conditions, based upon both physical inspection and recent operating and mechanical failure history during at least the past five (5) years;

(5) The evaluation of station design and equipment, including redundancy of pumps and electrical power supply, and other

equipment installed, based upon Chapter 40, *Wastewater Pumping Stations* of the most recent edition of *Recommended Standards for Wastewater Facilities* by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (commonly known as the "Ten State Standards");

(6) The evaluation of the ability of maintenance personnel to take corrective action within the critical response time calculated for each Pump Station; and

(7) A process for setting Pump Station rehabilitation priorities and expeditious schedules and an ongoing inventory of Pump Station rehabilitation, including identification of the rehabilitation techniques to be used, and an analysis of the effectiveness of completed rehabilitation.

21. Priority Areas Evaluation Report/Rehabilitation Plan. For purposes of implementing the SSER Work Plan under this Consent Decree, the City has already prioritized certain Sewersheds within the WCTS into two (2) Priority Areas for sewer assessment and rehabilitation work pursuant to the SSER Work Plan under this Consent Decree. This prioritization was based on existing information including the location and frequency of past SSOs and the other criteria set forth in Paragraph 20 above. These two (2) "Priority Areas" are shown on the maps in Appendix C, attached hereto and incorporated herein. The Priority Areas represent approximately forty-three percent (43%) of the WCTS by linear foot. The City shall complete the assessment of Priority Area 1 pursuant to the SSER Work Plan on or before thirty-two (32) Months after the Effective Date. The City shall complete the assessment of Priority Area 2 pursuant to the SSER Work Plan on or before forty-five (45) Months after the Effective Date. Within three (3) Months after completion of the assessment of a Priority Area as set forth above pursuant to the SSER Work Plan, the City shall submit to the EPA for review and approval a Priority Area Evaluation Report/Rehabilitation Plan setting forth the results of the assessment for that Priority Area and proposed rehabilitative and corrective actions and schedules in order to meet objectives of this Consent Decree. Upon approval by the EPA, the City shall implement the remedial measures in the approved Rehabilitation Plan portion of this submittal in accordance with the schedule contained therein.

a. Priority Area Evaluation Report. The Priority Area Evaluation Report portion of this submittal shall include, at a minimum, the following:

(1) A thorough analysis of historical and current flow monitoring, inspection, rainfall and other data, including data collected during the evaluation of the Priority Area;

(2) Identification of areas with Excessive I/I, such that these conditions are causing and/or contributing to SSOs and/or Prohibited Bypasses at a WWTP;

(3) Identification of sources of I/I within the Priority Area, if identifiable, by manhole/line segment, street address, type (Infiltration or Inflow), source (e.g., "wall leakage"), and estimated flow from the source;

(4) Identification of cross-connections between the WCTS and the City's municipal separate storm sewer system;

(5) Identification and quantification of SSOs, including all potential SSOs identified pursuant to implementation of the SSER Work Plan;

(6) A summary of activities undertaken to configure the Hydraulic Model for the Priority Area and certification that the Hydraulic Model is capable of performing those functions identified in Paragraph [REF _Ref387045491 \w \h * MERGEFORMAT], below;

(7) A summary of activities undertaken to calibrate the Hydraulic Model and certification that the Hydraulic Model has been calibrated (including the performance of sensitivity analyses) and verified using actual system data (e.g., flow data) from permanent and temporary sewage flow monitoring points in the WCTS (this certification shall include a description of the methodology, data collected, and results of the Hydraulic Model calibrations and verifications);

(8) Identification of portions of the WCTS within the Priority Area in which physical degradation is causing or contributing to SSOs;

(9) Results of average and peak daily dry and wet weather flow measurements;

(10) A determination of maximum Infiltration rate during periods of high ground water (in gpd/inch diameter-mile);

(11) A determination of maximum hourly Inflow rate during wet weather for various storm durations and intensities (in gpd/inch diameter-mile);

(12) A determination of peaking factors for the Priority Area (the ratio of measured peak flow to average dry weather flow as measured through the duration of the evaluation);

(13) A summary of flow monitoring activities, to include, at a

minimum, a map showing the location and type of each flow meter, problems encountered and deviations from the SSER Work Plan, and a description of flow monitor calibration activities, including any scatter graphs and calibration and verification graphs;

(14) A summary of field investigative activities performed to include, at a minimum: type of activity; number of activities performed (e.g., "100 out of 500 manholes inspected"), observations made under each activity (inspection procedure), and summaries of the results;

(15) A summary of the structural defects identified in the WCTS in the Priority Area to include, at a minimum: number of each type of defect by line segment, manhole number or street address, and estimates of peak flow or impact on WCTS capacity (as appropriate) from defects in each line segment, based on a consistently applied set of stated criteria as set forth in the SSER Work Plan;

(16) A summary of the technical approach utilized in carrying out the capacity assessment analyses outlined in Paragraph [REF _Ref479061436 \w \h] above;

(17) A detailed description of any deviations from the capacity assessment outlined in Paragraph [REF _Ref479061436 \w \h] above, including a discussion of the reasons for such deviation;

(18) Identification of all portions of the WCTS within the Priority Area with insufficient capacity (pursuant to Paragraph [REF _Ref479061436 \w \h] above and as identified by the Hydraulic Model of a Major Gravity Line, Pump Station or other structure) to convey peak flows without experiencing surcharge sufficient to cause a SSO under either projected peak flows or projected average conditions or both;

(19) A description of future projected flows;

(20) Information on the predicted (e.g. Manning equation) and actual peak flow capacity of all Major Gravity Lines (by segment), all Force Mains, siphons, and Pump Stations;

(21) Summaries of the number and footage of sewer segments surcharged, and the number of structures at which a SSO might be expected to occur under each condition investigated;

(22) Mapping for each condition investigated, illustrating each pipe segment operating in surcharge, and each manhole or structure at which a SSO might be expected to occur;

(23) Information regarding the Pump Station evaluation as required by Paragraph [REF _Ref387045172 \w \h * MERGEFORMAT] above;

(24) The results of the capacity assessment as required by Paragraph [REF _Ref479061436 \w \h] above; and

(25) A summary of any capital projects implemented since commencement of the SSER Work Plan.

b. Rehabilitation Plan. The Rehabilitation Plan portion of this submittal shall include, at a minimum, the following:

(1) Identification of specific measures and schedules that, when implemented, will result in adequate capacity in the WCTS within the Priority Area to collect, convey and treat anticipated peak flows, without SSOs or Prohibited Bypasses at a WWTP;

(2) Identification of the degree to which sources of Excessive I/I shall be removed, and the degree to which Excessive I/I removal is expected to alleviate capacity constraints, and propose specific remedial measures and schedules that will address those capacity limitations not expected to be addressed by Excessive I/I removal (anticipated I/I removal rates used in the development of the Rehabilitation Plan shall reflect current industry practice);

(3) Identification of specific remedial measures and schedules to address capacity limitations that may also include increases in Pump Station and sewer line capacity, construction of storage or equalization basin facilities, or increases in WWTP capacity;

(4) Identification of all measures and schedules necessary to eliminate all cross-connections between the WCTS and the City's municipal separate storm sewer system;

(5) Identification of all measures and schedules necessary to eliminate all SSOs caused by physical degradation of sewers, inadequate Pump Station capacities, or inadequate Pump Station reliability;

(6) Prioritized schedules for remedial measures based upon likely relative human health and environmental impact risks, SSO

frequencies, and SSO volumes;

(7) A description of the methodology used to apply the prioritization factors in Paragraph [REF _Ref387217846 \w \h * MERGEFORMAT] above;

(8) Estimated capital, operations and maintenance, and present value costs for each identified remedial measure in consistent, year-specific dollars;

(9) Identification of the dates for preliminary design, complete design, complete permitting, contract award, construction commencement, and construction completion dates for each measure proposed; and

(10) An expeditious schedule such that design, construction, and placement in service of all proposed measures shall be completed within one hundred fifty-six (156) Months after the Effective Date of this Consent Decree for Priority Area 1; and within one hundred ninety-two (192) Months after the Effective Date of this Consent Decree for Priority Area 2.

22. Priority Areas Rehabilitation Report. Within four (4) Months after completion of all remedial measures set forth in a Rehabilitation Plan for a particular Priority Area, the City shall submit to the EPA for review and approval a Rehabilitation Report summarizing the implementation of the Rehabilitation Plan. Such summary shall include, at a minimum, the following:

a. Identification of specific measures taken to achieve, and an analysis of whether such measures resulted in, adequate capacity in the WCTS within the Priority Area to collect and convey and treat anticipated peak flows, without SSOs or Prohibited Bypasses at a WWTP;

b. An analysis of the degree to which sources of Excessive I/I were removed, and the degree to which Excessive I/I removal alleviated capacity constraints; and

c. Identification of all measures taken to eliminate, and an analysis of whether such measures resulted in the elimination of, all cross-connections and SSOs caused by physical degradation of sewers, inadequate Pump Station capacities, or inadequate Pump Station reliability.

23. Capacity, Management, Operations and Maintenance Programs. The City shall develop and implement the Capacity, Management, Operations and Maintenance ("CMOM") programs as provided below. All CMOM programs shall be developed in accordance with EPA Region 4 CMOM guidance, attached hereto and incorporated herein as Appendix D. The City shall ensure that each CMOM program has a written, defined purpose; a written, defined goal; is

documented in writing with specific detail; is implemented by trained personnel; has established performance measures; and has written procedures for periodic review. The Parties recognize that the City may need or want to revise the CMOM Programs set forth below during the term of this Consent Decree. Such revisions shall not be considered modifications to the Consent Decree for purposes of Section [REF _Ref387059130 \w \h * MERGEFORMAT] (Modification). The City must obtain the EPA's prior written approval of any revision to the substance of any CMOM Program required by this Consent Decree and shall place copies of any such revised Program in the PDR in accordance with the provisions of Section [REF _Ref387059293 \w \h * MERGEFORMAT]. The City may make non-substantive changes to any CMOM Program required by this Consent Decree without the EPA's approval and shall provide a copy of any revised Program to the EPA and MDEQ, and place a copy of any such revised Program in the PDR within seven (7) Days after making such revision.

a. Sewer Overflow Response Plan ("SORP"). Within twelve (12) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a SORP that will establish timely and effective methods and means of responding to, cleaning up, and/or minimizing the impact of SSOs; timely reporting of the location, volume, cause, impact, and other pertinent SSO information to the appropriate regulatory agencies; and timely and effective notification of SSOs to potentially impacted public. At minimum, the SORP shall include and provide for the following:

(1) Within twenty-four (24) hours of the time the City first becomes aware of a SSO to waters of the United States or the State or of a SSO that will endanger public health or the environment, the City shall provide in an oral report to MDEQ the location of the SSO by street address or any other appropriate method (i.e., latitude-longitude). The oral report shall be given to MDEQ through calling (601) 961-5682.

(2) Within five (5) days of the time the City first becomes aware of a SSO to waters of the United States or the State or of a SSO that will endanger public health or the environment, the City shall also provide a written report to MDEQ for the SSO. The City shall maintain a copy of any written reports prepared pursuant to this Paragraph for a period of not less than five (5) years from the date of the SSO. The written report shall contain the following:

(a) The location of the SSO by street address, or any other appropriate method (i.e., latitude-longitude);

(b) The estimated date and time when the SSO began and stopped, or if it is still an active SSO, the anticipated time to stop the SSO;

(c) The steps taken to respond to the SSO;

(d) The name of the receiving water, if applicable;

(e) An estimate of the volume (in gallons) of sewage spilled;

(f) A description of the WCTS component from which the SSO was released (such as manhole, crack in pipe, Pump Station wet well or constructed overflow pipe);

(g) Subject to available information, an estimate of the SSO's impact on public health and to water quality in the receiving water body;

(h) The cause or suspected cause of the SSO;

(i) The date of the last SSO at the same point;

(j) The steps taken or to be taken to reduce, prevent, or eliminate, reoccurrence of the SSO;

(k) A list of all notifications to the public and other agencies or departments; and

(l) The steps taken or to be taken to clean up any surfaces that have been in contact and/or contaminated by the SSO.

(3) Procedures for documenting and reporting SSOs based on demonstrable evidence that a SSO occurred regardless of whether City personnel directly witnessed the SSO occurring.

(4) The City shall maintain for all SSOs for a period of not less than five (5) years from the date of the SSO all records documenting the steps that have been and will be taken to prevent the SSO from recurring, including work order records associated with investigation and repair activities related to the SSO. The City shall also maintain for a period of not less than five (5) years from the date of the SSO a list and description of complaints from customers or others regarding the SSO.

(5) The SORP shall provide procedures for responding to all SSOs to minimize the environmental impact and potential human health risk of SSOs. At a minimum, such response procedures shall include:

(a) A detailed description of the actions the City will undertake to immediately provide notice to the public when appropriate (through the local news media or other means including signs or barricades to restrict access) of a SSO;

(b) A detailed description of the actions the City will undertake to provide notice to appropriate federal, state or local agencies/authorities;

(c) A detailed plan (including the development of response standard operating procedures) to minimize the volume of untreated wastewater transmitted to the portion of the WCTS impacted by the events precipitating the SSO to minimize overflow volumes;

(d) A particular description of the City's response to Building Backups, including the timeframe for responses and the measures to be taken to clean up Building Backups found to be caused by conditions in the City's Sewer System, including procedures necessary to disinfect and/or remove items potentially contaminated by Building Backups such as 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 and other appropriate measures to disinfect and/or remove items potentially contaminated by Building Backups; and a description of the City's follow-up process to ensure adequacy of cleanup;

(e) A detailed plan of the resources to be used to correct or repair the condition causing or contributing to the SSO;

(f) A detailed plan to ensure the preparedness, including response training of City employees and personnel of other affected agencies, necessary for the effective implementation of the SORP in the event of a SSO and establishing procedures and providing adequate training to response personnel for estimating SSO volumes;

(g) A list of those SSO locations within the area of the WCTS served by each Pump Station that have been recorded as overflowing more than once within the previous twelve (12) month period and/or those locations at which a SSO is likely to occur first in the event of a Pump Station failure; and

(h) Pump Station emergency bypass/pump-around

strategies, and procedures.

b. Emergency Response Plan. Within twelve (12) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval an Emergency Response Plan. The Plan shall address both routine and catastrophic emergencies. Routine emergencies include such situations as overflowing manholes, line breaks, localized electrical failure and Pump Station outages. Catastrophic emergencies include floods, tornados, earthquakes or other natural events, serious chemical spills and widespread electrical failure. The Plan shall address areas of vulnerability and determine the effect of such a failure to operations, equipment and public safety and health based upon such factors as topography, weather, sewer system size, and other site specific factors. The Plan shall include standard forms. The Plan shall have the following components:

(1) The WWTP component of the Emergency Response Plan shall establish standard operating procedures for use in emergency situations, including changes in process controls.

(2) The WCTS component of the Emergency Response Plan shall establish standard operating procedures for use in emergency operations, including identification of the actions staff should take in the event of emergency situations (specific to the type of emergency that could occur); criteria for initiating and ceasing emergency operations; identification of appropriate repair equipment and sources thereof; and instructions on how to operate equipment and systems during an emergency when they are not functioning as intended but are not fully inoperable.

(3) In addition to the reporting requirements set forth in Section [REF _Ref386811409 \w \h * MERGEFORMAT] (Reporting Requirements), the City shall establish, in coordination with Public Health Authorities:

(a) Criteria to be used as the basis for immediately notifying the public and other impacted entities, such as users with a downstream water intake, of an emergency situation caused by a SSO, Prohibited Bypass, or effluent limit violation;

(b) A list identifying, by name, phone number and pager number, all the City staff who are responsible for notifying the public;

(c) A list identifying, by name and phone number, all

Public Contacts, including local media outlets, who must be contacted during an emergency situation;

(d) A list identifying the City staff who are authorized to make public statements during emergency situations; and

(e) Pre-scripted news releases for various types of emergency situations.

(4) In addition to the notification requirements set forth in the NPDES Permits, and the reporting requirements set forth in Section [REF _Ref386811440 \w \h * MERGEFORMAT] (Reporting Requirements), the City shall establish, in coordination with Public Health Authorities:

(a) Criteria to be used as the basis for immediately notifying regulatory authorities, MDEQ, the City and the Public Health Authorities of any emergency situation caused by a SSO, Prohibited Bypass, or effluent limit violation;

(b) A list identifying, by name, phone number and pager number, all the City staff who are responsible for notifying the regulatory authorities;

(c) A list identifying, by name and phone number, all officials who must be contacted; and

(d) Standard reporting forms.

c. Information Management System ("IMS") Program. Within forty-eight (48) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, an IMS Program, as more particularly described below. At a minimum, the IMS Program shall include the following:

(1) A management IMS component to provide City managers with guidance and instruction to adequately evaluate operations, maintenance, customer service, and Sewer System rehabilitation activities so that overall Sewer System performance can be determined and utility planning can be conducted. This IMS component shall utilize management reports and standard management forms.

(2) An operations IMS component to provide City managers and field supervisors with guidance to adequately track scheduled operational activities and to enhance operational performance.

This IMS component shall utilize operating reports and standard operation forms used by field personnel and shall provide for field supervisor review.

(3) A maintenance IMS component to provide City managers and field supervisors with guidance to adequately track scheduled maintenance activities and to enhance maintenance performance. This IMS component shall utilize maintenance reports and standard maintenance forms used by field personnel. The system shall provide for field supervisor review.

(4) A description of what information will be fed into the system, how it will be entered and by what means it will be recorded.

(5) A description of the management reports that will be generated from the input data (i.e., work reports), including examples and periodicity for review of such reports.

(6) A description of the work reports that will be prepared and submitted, including examples and periodicity for review of such reports.

(7) Standard forms that will be used by both field personnel and management for the Program, where applicable.

(8) A detailed description of how the records will be maintained.

(9) If computer software will be utilized, a description of the software to be used with cited references for software training and procedures for utilizing the software.

(10) Implementation of a Geographic Information Systems ("GIS") map of its entire WCTS on or before twenty-eight (28) Months after the Effective Date of this Consent Decree. Specifically, the City shall implement improvements to its current GIS as follows:

(a) An updated GIS database to include all as-builts and Active As-built Supplemental Information System ("AAS IS") forms, including new and corrected asset attribute data;

(b) Streamlining of the GIS data entry process for new assets, including electronic as-built data and necessary standards so that all new assets are added to the GIS system within ninety (90) calendar days of their activation in the field. Included shall be the development of a system to interface with the City WCTS

hydraulic computer model so that the information can be efficiently exported to the WCTS hydraulic computer model;

(c) Simplification of the AAS IS process to facilitate wider usage;

(d) Development of a "flagging process" for damage investigators to note GIS inaccuracies;

(e) Provision for additional GIS training and refresher training;

(f) Use of online access to GIS maps to facilitate more widespread access to GIS resources to remote staff; and

(g) Determination via suitable as-built drawings, or GPS or traditional surveying field measurements, elevations of all manhole rim elevations and sewer inverts at connections to manholes and Pump Stations and their inclusion into GIS.

(11) Development and implementation of performance indicators to provide City managers with guidance to adequately evaluate data collected in the IMS for use in determining the condition of the Sewer System and an evaluation of the City's CMOM programs. Performance indicators shall include, without limitation, the linear footage of Gravity Sewer Line and Force Main inspections, the linear footage of Gravity Sewers cleaned, the number of manholes inspected, the number of manholes cleaned/maintained, the number of inverted siphons inspected, the number of inverted siphons cleaned/maintained, the number of SSOs per mile of Gravity Sewer, the number of SSOs per mile of Force Main, the number of SSOs per Pump Station, per capita wastewater flow, NPDES Permit effluent compliance and such other performance indicators as the City may suggest and the EPA approves.

(12) Maintenance activity tracked by type (corrective, preventative, and emergency).

d. Sewer System Hydraulic Model. The City shall develop and maintain a calibrated hydraulic model of its Sewer System ("the Model") to establish existing hydraulic conditions and plan for future capacity needs of the Sewer System. The Model shall be developed concurrent with the sewer assessment and rehabilitation schedule for the initial assessment of the Priority Areas within the WCTS in Paragraph [REF _Ref387217918 \w \h * MERGEFORMAT] above. The model development schedule will be established based on system attribute data collected as part of the Sewer Mapping

Program described in Paragraph [REF _Ref387217960 \w \h * MERGEFORMAT] below and flow and rainfall data collected as part of the flow monitoring program described in Paragraph [REF _Ref387217984 \w \h * MERGEFORMAT] above.

(1) At a minimum, the Model shall be capable of:

(a) Accurately predicting the flow rate and hydraulic grade line of wastewater in Force Mains from Major Pump Stations and the Major Gravity Sewer Lines under any historical dry or wet weather condition;

(b) Accurately predicting the location and severity of SSOs from the WCTS under any historical dry or wet weather condition;

(c) Fully dynamic temporal analysis, including an accounting of downstream backwater impacts on upstream flows;

(d) Accurately predicting the impacts of changes to Pump Station capacities on upstream and downstream flow rates and hydraulic grade lines, including hydraulic losses which may result from either full or partial Pump Station failures; and

(e) Generating hydrographs depicting baseline wastewater flow and I/I for the Sewer System for various storm recurrence intervals. The Model shall include methods for accurately estimating the baseline wastewater flows and I/I components in each Sewershed using quality-controlled flow data obtained for the Sewer System.

(2) At a minimum, the City shall employ the Model to:

(a) Assist with the development and implementation of operation and maintenance procedures that optimize collection and transmission capacity;

(b) Evaluate the impacts which Infiltration/Inflow rehabilitation projects, proposed system modifications, and upgrades and expansions have on collection and transmission capacity and the performance of the City's Sewer System;

(c) Prioritize the continuing evaluation of the WCTS pursuant to the sewer assessment and rehabilitation in Paragraphs [REF _Ref387218022 \w \h * MERGEFORMAT] and [REF _Ref387217918 \w \h * MERGEFORMAT] above;

(d) Prioritize rehabilitation projects; and

(e) Implement the Capacity Assurance Program described in Paragraph [REF _Ref387218080 \w \h * MERGEFORMAT] below.

(3) The City shall develop and employ written procedures, protocols, and schedules to routinely perform:

(a) Calibrations of the Model to account for age-related and other changes to Sewer System hydraulics, and to obtain and manage updated data from physical field observations and measurements for this purpose;

(b) Verification of the Model's accuracy and performance; and

(c) Sensitivity analyses to determine how the Model responds to changes in input parameters and variables.

(4) Eight (8) Months after the Effective Date of this Consent Decree and implementation of the Mapping Program of Paragraph [REF _Ref387217960 \w \h * MERGEFORMAT] below, the City shall submit a report ("Model Report") to the EPA which:

(a) Identifies the functional attributes, characteristics, and limitations specific to the Model's software as compared to other products evaluated by the City, and explains how the Model meets the capabilities required in Paragraph [REF _Ref387218158 \w \h * MERGEFORMAT] above;

(b) Identifies the date that the Model was deemed to be calibrated and functional;

(c) Identifies all input and output parameters, constants, and assumed values used by the Model;

(d) Explains the bases for the input parameters used in each Sewershed to characterize baseline wastewater flows and I/I, the quality assurance procedures used in acquiring the input data, and the engineering bases for the selections of constants (e.g., friction factors) and assumed values; and

(e) Provides a brief description of each procedure and protocol developed pursuant to Paragraph [REF _Ref387218213

\w \h * MERGEFORMAT] above, provides the associated schedules, and identifies the individual(s) with their qualifications who are employed to implement the procedures and protocols.

(5) Following receipt of the Model Report, the EPA and MDEQ may conduct compliance audits of the capabilities of the Model, the implementation of the Model, and the use of written procedures and protocols as required by this Paragraph.

e. Sewer Mapping Program. Within twenty-eight (28) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Sewer Mapping Program to update its Sewer System maps and update the capabilities and procedures for utilization of the City's future Geographic Information System ("GIS") map of the City's WCTS. At minimum, the Sewer Mapping Program shall:

(1) Enable the City to produce maps of the WCTS using GIS technology;

(2) Be designed in such a manner so as to allow electronic integration with the City's computer-based collection system model and computer-based operations and maintenance information management system;

(3) Enable the City to produce maps showing the location of all manholes, Gravity Sewer Lines, Pump Stations, Force Mains, valves, inverted siphons and the WWTPs;

(4) Enable the City to produce maps capable of integrating electronically the locations of sewer service connections on lines that are televised;

(5) Enable the City to produce maps that include attribute data for the City's WCTS including, but not limited to, size, material, estimated age or age range, slope, invert elevation, and rim elevation;

(6) Enable the City to produce maps that delineate the spatial boundaries of all Sewersheds within the WCTS;

(7) Enable the City to produce maps that can integrate electronically available maps that show the location of surface streets and street addresses, permitted Fats, Oils and Grease ("FOG"; see Paragraph [REF _Ref387221731 \w \h]) customers, surface water bodies and political boundaries;

(8) Enable the City to produce maps in a manner that will allow use by all Sewer System operation and maintenance crew leaders in the field;

(9) Allow entry and mapping of work orders to identify and track problems geographically such as stoppages, service interruptions, and SSOs, and to assist in the planning and scheduling of maintenance;

(10) Include written standard operating procedures for use of the program, the acquisition and entry of updated mapping data for new assets or changes to existing assets, and updates to system software;

(11) Include locations of each permitted FOG establishment; and

(12) Include a schedule for the completion of the electronic mapping of each Sewershed in the City's WCTS.

f. Gravity Sewer System Operations and Maintenance Program. Within twenty-four (24) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Gravity Sewer System Operations and Maintenance Program to address SSOs, particularly those caused by FOG, roots and/or debris obstructions. At a minimum, the Gravity Sewer System Operations and Maintenance Program shall include the following:

(1) Written preventative operations and maintenance schedules and procedures which shall be scheduled appropriately and shall include, but not be limited to, written procedures for the following:

(a) Inspection and maintenance of all Gravity Sewers, manholes and inverted siphons;

(b) Identifying and documenting Gravity Sewer, manhole and inverted siphon conditions, including grease, roots, and/or debris accumulation;

(c) Identifying maintenance needs; and

(d) Scheduling preventative maintenance work/cleaning which the City may schedule in connection with the SSER Work Plan as described in Paragraph [REF _Ref387218022 \w \h * MERGEFORMAT] above.

(2) An engineering evaluation of potential sulfide and corrosion

control options and a summary report of findings, including a recommendation of the preferred sulfide and corrosion control method(s); provided, however, that such corrosion control options and methods shall not apply to components made of plastic or other similar materials.

(3) Prioritization for evaluating the Gravity Sewers based upon the size of the pipe (e.g., starting with the larger pipes and work back to smaller pipes), location of SSOs, community input or other criteria the City finds appropriate.

(4) Inspection of Gravity Sewers, manholes, and inverted siphon easements, including inspection of creek crossings, canal crossings, stream bank encroachment toward Gravity Sewers, manholes and inverted siphons, and easement accessibility (including the need to control vegetative growth or encroachment of man-made structures or activities that could threaten the integrity of the affected Gravity Sewer, manhole, or inverted siphon). Inspections shall include written reports, and where appropriate, representative photographs or videos of appurtenances being inspected (Gravity Sewers, manholes, inverted siphons, creek crossings, canal crossings, etc.). Inspectors shall promptly report any observed SSOs to their area supervisors and shall record any evidence of SSOs which may have occurred since the last inspection. Any observed SSO shall be promptly reported in accordance with the SORP.

(5) A schedule for the maintenance of easements.

(6) A staffing and funding plan sufficient in structure, skills, numbers and funding to allow completion of the operation and maintenance activities required by this Paragraph [REF _Ref387218300 \w \h * MERGEFORMAT].

(7) Data attributes for the City's mapping program allowing program data to be compared in the City's IMS against other pertinent data such as the occurrence of SSOs, including repeat SSO locations and permit violations.

(8) An inventory management system that includes:

(a) A list of critical equipment and critical spare parts;

(b) A list of where critical spare parts and critical equipment may be secured to allow repairs in a reasonable amount of time for those spare parts and critical equipment that are not

stored by the City, including spare pipe having a diameter of [24 inches] or greater; the list shall also set forth an inventory of spare parts and critical equipment stored by the City, as applicable; and

(c) Written procedures for updating the critical spare parts and equipment inventories in the IMS.

(9) Reports which list equipment problems and the status of work orders generated during the prior Month.

g. Pump Station Operations and Preventative Maintenance Program. Within twenty-one (21) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Pump Station Operations and Preventative Maintenance Program to facilitate proper operation and maintenance activities associated with the Pump Stations within the WCTS. At a minimum, the Pump Station Operations and Preventative Maintenance Program shall include the following:

(1) Identification of the means and modes of communication between Pump Stations, field crews, and supervising staff.

(2) Technical specifications of each Pump Station within the WCTS.

(3) A description of each Pump Station monitoring system which shall continuously monitor, report, and transmit information for each Pump Station.

(4) Written preventative operations and maintenance schedules and procedures which shall be scheduled appropriately and shall include, but not be limited to, written procedures for periodic service and calibration of instrumentation such as flow meters, liquid level sensors, alarm systems, elapsed time meters, and remote monitoring equipment. Such written preventative operations and maintenance schedules and procedures shall also include predictive (including non-physical inspections) and/or physical inspection and service for all Pump Stations including, but not limited to:

(a) Reading, recording and maintaining records of information from the elapsed time meters and pump start counters;

(b) Observing and documenting wet well conditions, including grease and/or debris accumulation;

(c) Checking and re-setting, as necessary to improve system performance, wet well pumping points (e.g., floats);

(d) Checking, recording and maintaining records of system pressure(s);

(e) Checking SCADA and/or alarm components;

(f) Checking stand-by power sources;

(g) Checking motor electrical system, including, but not limited to, line voltage on each leg quarterly, current draw on each leg quarterly, and resistance of windings on each leg quarterly; and

(h) Identifying maintenance needs.

(5) Written standard emergency/reactive operations and maintenance procedures. The City may use portable pumps, portable generators or alternative power sources as it deems appropriate. At a minimum, the standard emergency/reactive Pump Station operating procedures shall include:

(a) Criteria used to determine the need for emergency operations and maintenance;

(b) Initiation/use of stand-by power (e.g., portable generators), where applicable;

(c) Initiation/use of portable pump (e.g., bypass/pump-around operations), where applicable;

(d) Evaluation of the need for additional equipment for emergency/reactive operations, including, but not limited to, additional portable generators and/or additional portable pumps (for pump-around operations);

(e) Evaluation of the need for on-site standby power (e.g., on-site generator and/or second electrical feed from the power grid) for each Pump Station should the City choose, not to have a portable pump available for the Pump Station; and

(f) Establishing standard forms, reporting procedures and performance measures for emergency/reactive operations and maintenance.

(6) An inventory management system that includes:

(a) A list of critical equipment and critical spare parts;

(b) A list of where critical spare parts and critical equipment may be secured to allow repairs in a reasonable amount of time for those spare parts and critical equipment that are not stored by the City; the list shall also set forth an inventory of spare parts and critical equipment stored by the City, as applicable; and

(c) Written procedures for updating the critical spare parts and equipment inventories in the IMS.

(7) Reports which list equipment problems and the status of work orders generated during the prior Month.

(8) A staffing and funding plan sufficient in structure, skills, numbers and funding to allow completion of the operations and maintenance activities required by this Paragraph [REF _Ref387218349 \w \h * MERGEFORMAT].

h. Fats, Oils and Grease ("FOG") Control Program. Within eighteen (18) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a FOG Control Program. At a minimum, the FOG Control Program shall apply City-wide and include the following:

(1) A FOG characterization study that shall identify the sources of FOG causing problems in the WCTS and the most appropriate method or mechanism for addressing those sources.

(2) The legal authority to control the discharge of FOG into the WCTS, including the ability to implement a permit and enforcement program for commercial and industrial sources.

(3) Specification of accepted devices to control the discharge of FOG into the WCTS.

(4) Establishment of standards for the design and construction of FOG control devices including standards for capacity and accessibility, site map, design documents and as-built drawings.

(5) Establishment of FOG control device management, operations and maintenance standards, or best management practices, that address onsite record keeping requirements, cleaning frequency, cleaning standards, use of additives, and ultimate disposal.

(6) Establishment of construction inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements, to assure that FOG control devices are constructed in

accordance with established design and construction standards.

(7) Establishment of compliance inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements to assure that FOG control devices are being managed, operated and maintained in accordance with the established management, operation and maintenance standards or best management practices.

(8) Establishment of a FOG disposal manifest system, with the included requirements that FOG and septage not be comingled and that the point of origin be specified on the manifest.

(9) Establishment of an enforcement program, including specific enforcement mechanisms, to ensure compliance with the FOG Control Program.

(10) Establishment of a compliance assistance program to facilitate training of FOG generators and their employees.

(11) Establishment of a comprehensive public education program directed at reducing the amount of FOG entering the WCTS from residences.

(12) Establishment of staffing (technical and legal) and equipment requirements to ensure effective implementation of the FOG Control Program.

(13) A regularly maintained list of current commercial establishment FOG generators including a description of their FOG generating processes and estimated average quantity of FOG generated daily.

(14) Establishment of performance indicators to be used by the City to measure the effectiveness of the FOG Control Program.

(15) A schedule to review, evaluate and revise the FOG Control Program on at least an annual basis. Any revisions to the FOG Control Program shall be submitted to the EPA in accordance with Paragraphs [REF _Ref387218411 \w \h * MERGEFORMAT] through [REF _Ref387218427 \w \h * MERGEFORMAT] and [REF _Ref387218452 \w \h * MERGEFORMAT] of this Consent Decree.

Within six (6) Months after the EPA's approval of the FOG Control Program, the City shall enact the necessary City ordinances for the immediate implementation of the

Program. After the ordinances become effective as provided by State law, the City shall implement the FOG Control Program, which shall be incorporated into, and become enforceable under, this Consent Decree.

i. Capacity Assurance Program. Within thirty-six (36) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Capacity Assurance Program ("CAP"), including a schedule for full implementation of the program not to exceed forty-eight (48) Months after the Effective Date. Pursuant to the capacity assessment performed in accordance with Paragraphs [REF _Ref387218022 \w \h * MERGEFORMAT] and [REF _Ref387217918 \w \h * MERGEFORMAT] above, the CAP shall identify any portion of the Sewer System with insufficient capacity under either peak wet weather, or average conditions, or both. It shall also analyze all portions of the WCTS that hydraulically impact all known SSOs and all components of a WWTP that may contribute to violations of the NPDES Permits. The CAP shall assess peak flow capacity of all Pump Stations, all Major Sewer Gravity Lines, all Force Mains and siphons and their respective related appurtenances, all known SSO locations, and any other portions of the WCTS that must be assessed so as to allow a technically-sound evaluation of the causes of SSOs and Prohibited Bypasses at a WWTP for existing and proposed flows. The CAP shall enable the City to authorize new sewer service connections, or increases in flow from existing sewer service connections, only after the City certifies that the analysis procedures contained in the approved CAP have been used and that the City has determined, based on those procedures, that there is Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity as set forth below. The Capacity Assurance Program shall include, at a minimum, the following:

(1) The technical information, methodology, and analytical techniques, including the model or software, to be used by the City to calculate collection, transmission, and treatment capacity.

(2) The means by which the City will integrate its certification of Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity with the issuance of building permits by the City and the City's acquisition of new or existing sewers from other owners.

(3) The means by which the City will integrate its certification of Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity with the requirements of Mississippi Commission on Environmental Quality Regulation 11 Miss. Admin. Code Part 6, Ch.1, Rule 1.1.1.C(1)(b) and Rule 1.1.6.B(2) and B(4), regarding the certification of capacity for the construction of new sewer lines that provide new flow into the City's Sewer System.

(4) The technical information, methodology, and analytical techniques, including the model or software, to be used by the City to calculate the net (cumulative) increase or decrease in volume of wastewater introduced to the WCTS as a result of the City's authorization of new sewer service connections and increases in flow from existing connections and the completion of: (i) specific projects that add or restore collection or transmission capacity to the WCTS or add or restore adequate treatment capacity at a WWTP as required by 40 C.F.R. § 133 ("Capacity Enhancing Projects"), (ii) specific projects that reduce peak flow through removal of I/I ("I/I Projects"), and (iii) permanent removal of sewer connections ("Removal of Connections").

(5) An Information Management System capable of tracking the accumulation of banked credits, earned pursuant to Paragraph [REF _Ref387218542 \w \h * MERGEFORMAT] below, from completion of Capacity Enhancing Projects, I/I Projects and Removal of Connections; the capacity-limited portion of the Sewershed in which those credits were earned; and the expenditure of such credits on future increases in flow from new or existing sewer service connections in that capacity-limited portion of the Sewershed.

(6) All evaluation protocols to be used to calculate collection, transmission, and treatment capacity including, but not limited to, standard design flow rate rules of thumb regarding pipe roughness, manhole head losses, as-built drawing accuracy (distance and slope), water use (gallons per capita per day), projected flow impact calculation techniques, and metering of related existing peak flows (flows metered in support of analysis and/or manual observation of existing peak flows). The City may identify sewer line segments which have been specifically designed and constructed to operate under surcharge conditions (e.g., with welded or bolted joints) and identify the level of surcharge for those segments.

(7) Capacity Certifications. Except as provided in Paragraphs [REF _Ref387218643 \w \h * MERGEFORMAT] through [REF _Ref387218698 \w \h * MERGEFORMAT] below, the City shall implement the CAP by authorizing a new sewer service connection, or additional flow from an existing sewer service connection, only after it certifies that the analysis procedures contained in the CAP have been used and that the City has determined, based on those procedures, that there is Adequate

Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity as defined below:

(a) Treatment Capacity Certifications. The City's certification of "Adequate Treatment Capacity" shall confirm that, at the time a WWTP receives the flow from a proposed sewer service connection(s) or increased flow from an existing sewer service connection(s), when combined with the flow predicted to occur from all other authorized sewer service connections (including those which have not begun to discharge into the WCTS), the WWTP will not be in "non-compliance" for quarterly reporting as defined in 40 C.F.R. Part 123.45, Appendix A. In addition, the City's certification of "Adequate Treatment Capacity" shall confirm that the new or increased flow to a WWTP will not result in a Prohibited Bypass.

(b) Transmission Capacity Certifications. The City's certification of "Adequate Transmission Capacity" shall confirm that each Pump Station, through which the proposed additional flow from new or existing sewer service connections would pass to the WWTP receiving such flow, has the capacity to transmit, with its largest pump out of service, the existing one (1) hour peak flow passing through the Pump Station, plus the addition to the existing one (1) hour peak flow predicted to occur from the proposed connection, plus the addition to the existing one (1) hour peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the WCTS.

(c) Collection Capacity Certifications. The City's certification of "Adequate Collection Capacity" shall confirm that each Major Gravity Line, through which the proposed additional flow from new or existing connections would pass, has the capacity to carry the existing one (1) hour peak flow passing through the Major Gravity Line, plus the addition to the existing one (1) hour peak flow from the proposed connection, plus the addition to the existing one (1) hour peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the WCTS without causing a Surcharge Condition.

(d) Definition of "One (1) Hour Peak Flow" and "Surcharge Condition." The terms set forth below are defined herein only for purposes of implementation of the CAP. The City agrees that it shall not use these definitions for purposes of

establishing any design criteria for the implementation of rehabilitation measures to the Sewer System. The term "one (1) hour peak flow" shall mean the greatest flow in a sewer averaged over a sixty (60) minute period at a specific location expected to occur as a result of a representative 2 year-24 hour storm event. The term "Surcharge Condition" shall mean the condition that exists when the supply of wastewater resulting from the one (1) hour peak flow is greater than the capacity of the pipes to carry it and the surface of the wastewater in manholes rises to an elevation greater than twenty-four (24) inches above the top of the pipe or within three (3) feet of the rim of the manhole, and the sewer is under pressure or head, rather than at atmospheric pressure, unless the City has, pursuant to Paragraph [REF _Ref387221235 \w \h * MERGEFORMAT] above, identified that pipe segment and manhole as designed to operate in that condition, in which case the identified level of surcharge will be used.

(8) Minor Sewer Connections. For minor sewer service connections, the City may elect to perform a monthly capacity analysis for each Sewershed by certifying that the Sewershed has adequate capacity, as defined above, to carry existing peak flows and the additional flows generated by all such minor sewer service connections projected to be approved in the subsequent month. For any Sewershed which can be so certified, the City may approve these projected minor sewer service connections without performing individual certifications for each connection. For the purposes of this Paragraph only, a "minor sewer service connection" is a connection with an average flow not to exceed 2,500 gallons per day.

(9) Capacity for Treatment, Transmission, and Collection in Lieu of Certification. The City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot satisfy the requirements of Paragraph [REF _Ref387221283 \w \h * MERGEFORMAT] above, provided the City certifies that all of the following provisions, where applicable, are satisfied:

(a) The City is in substantial compliance with this Consent Decree;

(b) The sewer lines which will convey the proposed additional flow from new or existing sewer service connections have not experienced dry weather SSOs due to inadequate capacity

within the previous twelve (12) Months; or, in the alternative, the causes of any dry weather SSOs due to inadequate capacity have been eliminated;

(c) The City has identified the sewer line segment(s), Pump Station(s) and/or wastewater treatment systems that do not meet the conditions for certification of Adequate Treatment Capacity, Adequate Collection Capacity, and/or Adequate Transmission Capacity;

(d) The City shall complete, prior to the time the proposed additional flow from new or existing sewer service connections is introduced into the WCTS, specific Capacity Enhancing Projects, I/I Projects, and/or Removal of Connections which will add sewer capacity or reduce peak flows to the identified sewer line segment(s), Pump Station(s), and wastewater treatment system(s) in accordance with the factors set forth in Paragraphs [REF _Ref387221348 \w \h * MERGEFORMAT] and [REF _Ref387221388 \w \h * MERGEFORMAT] below;

(e) Where the City has undertaken specific Capacity Enhancing Projects that provide for additional off-line storage or additional treatment capacity, and/or specific Removal of Connections to satisfy the requirements of Paragraph [REF _Ref387221430 \w \h * MERGEFORMAT] above, the estimated added capacity resulting from such projects must be equal to or greater than the estimated amount of any proposed additional flow;

(f) Where the City has undertaken specific I/I Projects or Capacity Enhancing Projects, other than those that provide for additional off-line storage or additional treatment capacity, to satisfy the requirements of Paragraph [REF _Ref387221430 \w \h * MERGEFORMAT] above, the estimated reduction in peak flows or added capacity resulting from such projects must exceed the estimated amount of any proposed additional flow by a factor of 3:1;

(g) Commencing within twelve (12) Months after the EPA's approval of the CAP and annually thereafter, the City has performed a review of specific Capacity Enhancing Projects and I/I Projects undertaken to determine if actual added capacity and peak flow reductions are in line with what the City originally estimated for such projects; and the City has used the results of this review to adjust future estimates as necessary;

(h) Any new sewer service connection or increase in flow to an existing connection authorized prior to the completion of a necessary added capacity or peak flow reduction project as set forth above shall be conditioned upon completion of such project prior to the time that the new sewer service connection or flow increase is introduced into the WCTS; and

(i) In implementing the provisions of this Paragraph [REF _Ref387218542 \w \h], the City may use a "banking credit system" for the sewer line segment(s), Pump Station(s), and/or wastewater treatment systems for which the City is not able to satisfy the conditions set forth in Paragraph [REF _Ref387221283 \w \h * MERGEFORMAT] above. The addition of sewer capacity and/or reduction in peak flows to the affected sewer line segment, Pump Station, or wastewater treatment system from (i) the completed sanitary sewer projects set forth on Appendix A, (ii) the Early Action Projects set forth on Appendix B, and/or (iii) Capacity Enhancement Projects, I/I Projects, and Removal of Connections completed after the Effective Date of this Consent Decree may be accumulated in the form of credits in the banking credit system in accordance with the factors set forth in Paragraphs [REF _Ref387221348 \w \h] and [REF _Ref387221388 \w \h] above. Such credits may then be used for authorization of future sewer service connections or increases in flow from existing connections to the affected sewer line segment, Pump Station, or wastewater treatment system in the capacity-limited portion of the Sewershed. Increases in flow from all authorized new sewer service connections or increases in flow from existing connections occurring between the Effective Date of this Consent Decree and when the City begins full implementation of the CAP shall be deducted from any such accumulated credits in the banking credit system.

~~(i)~~

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(10) Essential Services. Notwithstanding the above provisions, the City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot certify that it has Adequate Transmission Capacity, Adequate Collection Capacity, and/or Adequate Treatment Capacity as defined above for health care facilities, public safety facilities, and public schools and, subject to the EPA review and approval, for government facilities; and in those cases where a pollution or sanitary nuisance condition exists, as determined by the local county health

department or its regulatory successor, as the result of a discharge of untreated wastewater from an on-site septic tank.

(11) Existing Illicit Connections. Notwithstanding the provisions above, the City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot certify that it has Adequate Transmission Capacity and/or Adequate Collection Capacity and/or Adequate Treatment Capacity as defined above, for any illicit connections to the municipal separate storm sewer system ("MS4") which would otherwise result in the discharge of municipal sewage to waters of the State.

(12) Certifications. All certifications pursuant to this Paragraph [REF _Ref387218080 \w \h * MERGEFORMAT] shall be made by a professional engineer registered in the State of Mississippi and shall be approved by a responsible party of the City as defined by 40 C.F.R. § 122.22(b). The City shall maintain all such certifications, and all data on which the certifications are based, in its offices for inspection by the EPA and MDEQ. The EPA and MDEQ may request, and the City shall provide, any and all documentation necessary to support any certification made by the City pursuant to this Paragraph [REF _Ref387218080 \w \h * MERGEFORMAT], and make available, to the extent possible, individuals providing such certifications to meet with the EPA and MDEQ.

j. Training Program. Within thirty-two (32) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a Training Program, including a schedule for full implementation of the program not to exceed twelve (12) Months after its approval by the EPA. The Training Program shall include, at a minimum, the following:

(1) Technical Training. The technical training component shall include, at a minimum, the following:

(a) Employee technical training and refresher technical training requirements (curriculum) that ensure that each City employee has a level of knowledge, commensurate with duties, of the overall functions of the City's infrastructure;

(b) A description of outside technical training and networking opportunities, such as conferences and seminars, that are made available to City employees;

(c) A description of the extent to which employee

certification, at the State or at the City level, is required as a basis for obtaining or maintaining a position;

(d) Records of technical training, including on-the-job training, which shall be maintained in an information management system and shall describe the degree to which completed technical training and on-the-job training is tied to promotion and pay; and

(e) A description of the technical training required before an employee can undertake specific work assignments or tasks.

(2) Skills Training. The skills training component shall include, at a minimum, the following:

(a) Employee skills training and refresher skills training requirements (curriculum) that ensure that each City employee has a level of knowledge, commensurate with duties, of the specific equipment to be used and the procedures to be followed in carrying out duties;

(b) A description of outside skills training opportunities, such as manufacturers' training, that are made available to employees;

(c) A description of the extent to which employee certification, at the State or at the City level, is required as a basis for obtaining or maintaining a position;

(d) Records of skills training, including on-the-job training, which shall be maintained in an information management system) and shall describe the degree to which completed skills training and on-the-job training is tied to promotion and pay; and

(e) A description of the skills and on-the-job training required before an employee can undertake specific work assignments or tasks.

(3) Safety Training. The safety training component shall include, at a minimum, the following:

(a) Employee safety training and refresher safety training requirements (curriculum) that ensure that each City employee has level of knowledge regarding on-the-job safety that is commensurate with the employee's equipment and work environment;

(b) A description of the extent to which employee safety certification at the State or at the City level is required as a basis for obtaining or maintaining a position;

(c) Records of safety training, including on-the-job training, which shall be maintained in an information management system and shall describe the degree to which completed safety training and on-the-job training is tied to promotion and pay; and

(d) A description of the safety training required before an employee can undertake specific work assignments or tasks.

k. [Chronic SSO Advanced /Remote Monitoring] Program. Within sixteen (16) Months after the Effective Date of this Consent Decree, the City shall install and maintain manhole and/or sewer surcharge level remote monitoring devices at the SSO locations identified on Appendix F, attached hereto and incorporated herein. After this initial sixteen (16)-Month period, the City shall install and maintain manhole and/or sewer surcharge level remote monitoring devices at SSO locations within four (4) Months after the City identifies such location as having experienced more than one (1) wet-weather related SSO in any twelve (12)-month period. The remote monitoring devices will monitor sewer wastewater levels and will be designed to send real-time alerts of likely or suspected SSO occurrences when specified thresholds are attained and /or exceeded, thereby improving responsiveness and operations with the goal of preventing SSOs from occurring at that location or locations. The City will maintain these remote monitoring devices until such time as the City can demonstrate to the EPA that the cause of the SSO at a particular location has been mitigated. The City shall also evaluate the benefits of this technology and other remote wastewater detection technologies for continued use within the WCTS to increase efficiency in SSO prevention/response and to enhance hydraulic modeling efforts. The City shall keep records of all monitoring locations for a period of at least five (5) years and shall report all surcharged conditions in the Quarterly Report required by Paragraph [REF _Ref470788139 \w \h] of this Consent Decree. The City shall report all SSOs discovered pursuant to the remote monitoring devices in accordance with the NPDES Permits, the SORP and the Quarterly Reports. The City may reduce the number of remote monitoring devices if it can demonstrate to the EPA that SSO locations are shown to be related in such a manner that a single remote monitoring device can provide the required information for multiple SSO locations. The City shall visually inspect each SSO location in which the remote monitoring device indicates that the specified threshold is attained and /or exceeded. If the City selects to monitor multiple SSO locations at a single remote monitoring location, the City shall visually inspect all related SSO locations when the monitored location indicates that the specified threshold is attained and /or exceeded. SSOs identified at these locations shall be reported in the Quarterly Report pursuant to Paragraphs [REF _Ref470788139 \w \h] and [REF _Ref485634140 \w \h] ...

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24. Permits. Where any compliance obligation under this Section requires the City to obtain a federal, state, or local permit or approval, the City shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The City may seek relief under the provisions of Section [REF _Ref322450615 \r \h * MERGEFORMAT] (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the City has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VIII. CIVIL PENALTY

25. Within thirty (30) Days after the Effective Date, the City shall pay the sum of $165,6~~0~~00 as a civil penalty as follows: $82,8~~5~~00 to the United States and $82,8~~5~~00 to the State.

Commented [MV2]: This is proposal with the SEP.

26. The City shall pay the civil penalty due to the United States either by use of https://www.pay.gov to the U.S. Department of Justice account, or by FedWire Electronic Funds Transfer ("EFT"), in accordance with instructions provided to the City by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Southern District of Mississippi after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which the City shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

~~*[Insert name, address, phone number, and email address of the individual who will be responsible for making the payment]*~~Mayor, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501
[EMAIL]

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on behalf of the City. The City may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and the EPA in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT] (Notices). At the time of payment, the City shall send notice that payment has been made: (i) to the EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at the EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT]; and (iii) to the EPA in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT]. Such notice shall reference the CDCS Number and DOJ case number 90-5-1-1-10964. In the event that full cash payment to the United States is not made within thirty (30) Days of the Effective Date, the City shall also pay to the United States interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

27. The City shall pay the civil penalty due to MDEQ by check payable to the "Mississippi Department of Environmental Quality." The check shall reference the case name and civil action number herein and shall be sent to: Mississippi Department of Environmental Quality, Attn: Jennifer Parish, P.O. Box 2339 Jackson, Mississippi 39225. In the event that full cash payment to MDEQ is not made within thirty (30) Days of the Effective Date, the City shall also pay to MDEQ interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

IX. **SUPPLEMENTAL ENVIRONMENTAL PROJECT**

28. The City shall satisfactorily implement and complete the Supplemental Environmental Project ("SEP") in accordance with all provisions of Appendix E of this Consent Decree. The SEP shall be completed in accordance with the schedule set forth in Appendix E.

29. As more particularly described in Appendix E, the SEP shall consist of projects to reduce extraneous flows entering the WCTS through defective private laterals and through illicit connections from residential properties the owners of which face financial hardship as determined under Section B of Appendix E . The total expenditure for the SEP shall be not less than $220,800, exclusive of certain costs detailed in Section C of Appendix E. The City may use contractors or consultants in planning and implementing the SEP.

30. With regard to the SEP, the City certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the City in good faith estimates that the cost to implement the SEP is $220,800.

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

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

d. That the City has not received and will not receive credit for the SEP in any other enforcement action.

e. That the City will not receive any reimbursement for any portion of the SEP from any other person.

f. That the City is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP and that, to the best

of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could fund the same activity as the SEP. For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, federal loan, or federally-guaranteed loan, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

Commented [MV4]: Note to City,
As example of "reasonable inquiry", City to check with State that indiv recipients of SEP not in receipt of federal funds for the same activity.

31. "Satisfactory completion" of the SEP shall include the completion of a minimum number of forty-five (45) repairs or replacements of defective private laterals or removals of illicit connections, and a minimum expenditure of $220,800 of eligible SEP costs.

32. SEP Completion Report. Within thirty (30) Days after the date set for completion of the SEP, the City shall submit a SEP Completion Report to the EPA for review and approval. The SEP Completion Report shall contain all of the following information:

a. A detailed description of the SEP as implemented.

b. A description of any problems encountered in completing the SEP and the solutions thereto.

c. An itemized list of all eligible SEP costs expended.

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree.

e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

33. The EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate the City's SEP Completion Report.

34. After receiving the SEP Completion Report, the EPA shall notify the City whether or not the City has satisfactorily completed the SEP. If the City has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section [REF _Ref475015844 \w \h] of this Consent Decree.

35. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section [REF _Ref405378877 \w \h] of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

36. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph [REF _Ref387046011 \w \h].

37. Any public statement, oral or written, in print, film, or other media, made by the City making reference to the SEP under this Decree from the date of its execution of this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States et al. v. City of Hattiesburg, taken on behalf of the U.S. Environmental Protection Agency and the Mississippi Department of Environmental Quality to enforce the Clean Water Act and the Mississippi Air and Water Pollution Control Law."

X. **REPORTING REQUIREMENTS**

38. The City shall submit the following reports:

a. Quarterly Reports. Beginning one (1) Month after the first Calendar Quarter following the Effective Date of this Consent Decree, and one (1) Month after each subsequent Calendar Quarter thereafter until termination of the Consent Decree, the City shall submit to the EPA for review and approval a Quarterly Report that shall include the date, time, location, source, estimated duration, estimated volume, receiving water (if any), and cause of all SSOs occurring in the applicable three (3)-Month period in a tabulated electronic format.

b. Semi-Annual Reports. Beginning one (1) Month after the first two (2) Calendar Quarters following the Effective Date of this Consent Decree, and one (1) Month after each subsequent two (2) Calendar Quarters until termination of the Consent Decree, the City shall submit to the EPA for review and approval a Semi-Annual Report. Each Semi-Annual Report shall include, at a minimum:

(1) A description of projects and activities completed and milestones achieved during the previous applicable six (6)-Month period pursuant to the requirements of this Consent Decree, in Gantt chart or similar format, including a description of the status of compliance or non-compliance with the requirements of this Consent Decree and, if applicable, the reasons for non-compliance. If any non-compliance cannot be fully explained at the time the report is due, the City shall include a statement to that effect in the report. The City shall investigate to determine the cause of the non-compliance and then shall submit an amendment to the report, including a full explanation of the cause of the non-compliance, within thirty (30) Days after submission of the Semi-Annual Report.

(2) A summary of significant projects and activities anticipated to be performed, and milestones anticipated to be achieved, in the successive applicable six (6)-Month period to comply with the requirements of this Consent Decree, in Gantt chart or similar

format.

(3) Any additional information the City determines is appropriate to demonstrate that the City is implementing the remedial actions required under this Consent Decree in an adequate and timely manner.

c. Annual Reports. Beginning two (2) Months after the first full Calendar Year, and two (2) Months after each subsequent Calendar Year until termination of this Consent Decree, the City shall submit to the EPA for review and approval an Annual Report. Each Annual Report shall cover the most recent applicable Calendar Year and shall include, at a minimum:

(1) A summary of the CMOM Programs implemented or modified pursuant to this Consent Decree, including a comparison of actual performance with any performance measures that have been established.

(2) A trends analysis of the number, volume, duration, and cause of the City's SSOs for the previous two Calendar Years updated to reflect the SSOs that occurred during the previous twelve (12)-Month period except that the first Annual Report shall only include the first twelve (12) Months.

39. Except as otherwise provided in the SORP or ERP, whenever any violation of this Consent Decree or any other event affecting the City's performance under this Consent Decree or its NPDES Permits may pose an immediate threat to the public health or welfare or the environment, the City shall notify, pursuant to Section [REF _Ref463351858 \n \h] (Notices), the EPA and MDEQ orally or by electronic or facsimile transmission as soon as possible, but no later than twenty-four (24) hours after the City first knew of the violation or event. This procedure is in addition to the requirements set forth in Paragraph [REF _Ref405368543 \w \h].

40. All reports shall be submitted to the persons designated in Section [REF _Ref322450461 \r \h * MERGEFORMAT] (Notices).

41. Each report by the City under this Section shall be submitted in accordance with the provisions of Paragraph [REF _Ref387046011 \w \h * MERGEFORMAT] of this Consent Decree. The certification requirement in Paragraph [REF _Ref387046011 \w \h * MERGEFORMAT] does not apply to emergency or similar notifications where compliance would be impractical, including notifications required under Paragraph [REF _Ref405368992 \w \h].

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

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

XI. STIPULATED PENALTIES

44. The City shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section [REF _Ref322450784 \r \h * MERGEFORMAT] (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

45. Late Payment of Civil Penalty. If the City fails to pay the civil penalty required to be paid under Section [REF _Ref322450322 \r \h * MERGEFORMAT] (Civil Penalty) when due, the City shall pay a stipulated penalty of $1,000 per Day for each Day that the payment is late.

46. The following stipulated penalties shall accrue for each violation identified below:

a. SSOs Reaching Waters. For each SSO that reaches waters of the United States or the State, a stipulated penalty may be assessed as follows:

If SSO Occurs in:	Penalty Per Violation Per Day:
Calendar Years 2019-2021	$500
Calendar Years 2022 until Termination	$1,000

b. Failure to Timely Submit Deliverable. For each day the City fails to Timely submit any Deliverable, a stipulated penalty for each such Deliverable may be assessed as follows:

Period of Noncompliance:	Penalty Per Deliverable Per Day:
1-30 days	$500
31-60 days	$1,000
More than 60 days	$2,000

c. Failure to Timely Implement Work. For each day the City fails to Timely implement any Work, daily stipulated penalties may be assessed for each such item of Work as follows:

Period of Noncompliance:	Penalty Per Violation Per Day:
1-30 days	$500
31-60 days	$1,000
61 days -180 days	$2,000
More than 180 days	$5,000

d. Failure to Timely Report SSOs. For each SSO that the City fails to Timely report in a Quarterly Report as set forth in Paragraph [REF _Ref470788139 \w \h] of this Consent Decree, a stipulated penalty of $5,000 may be assessed.

e. Failure to Timely Implement SEP Milestones. For each Day the City fails to Timely implement a SEP milestone set forth in Section [REF _Ref475018243 \w \h] or Appendix E, daily stipulated penalties may be assessed as follows:

Period of Noncompliance:	Penalty Per Violation Per Day:
1-30 days	$500
31-60 days	$1,000

~~f.~~

f. Failure to satisfactorily complete the SEP. For the SEP identified in Section [REF _Ref474768983 \w \h] and Appendix E, if the City fails to satisfactory complete the SEP as described, a stipulated penalty of $242,880, minus any creditable expenditures as determined by EPA, and minus any stipulated penalties already paid under Paragraph 46.e, may be assessed.

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

48. The City shall pay any stipulated penalty within thirty (30) Days of receiving a United States' written demand. The City shall pay fifty (50) percent of the total stipulated penalty amount due to the United States and fifty (50) percent to the State.

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

50. Stipulated penalties shall continue to accrue as provided in Paragraph [REF _Ref324245385 \r \h * MERGEFORMAT], 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 the EPA, after consultation with MDEQ, and is not appealed to the Court, the City shall pay accrued penalties determined to be owing, together with interest, within thirty (30) Days of the effective date of the agreement or the receipt of the EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the City 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, the City shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

51. The City shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph [REF _Ref324245444 \r \h * MERGEFORMAT], except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. The City shall pay stipulated penalties owing to the State in the manner set forth in Paragraph [REF _Ref383433461 \w \h * MERGEFORMAT].

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

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

54. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section [REF _Ref322450868 \r \h * MERGEFORMAT] (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for the City's violation of this Decree or applicable law, including but not limited to an action against the City for statutory penalties, additional injunctive relief, mitigation or offset measures,[ADVANCE \l0][ADVANCE \d0] and/or contempt.[ADVANCE \l0] However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

XII. **FORCE MAJEURE**

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

56. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the City shall provide notice orally or by electronic or facsimile transmission to the EPA and MDEQ, within 72 hours of when the City first knew that the event might cause a delay. Within seven (7) days thereafter, the City shall provide in writing to the EPA and MDEQ an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the City's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The City shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the City from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The City shall be deemed to know of any circumstance of which the City, any entity controlled by the City, or the City's contractors knew or should have known.

57. If the EPA, after a reasonable opportunity for review and comment by MDEQ, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the EPA, after a reasonable opportunity for review and comment by MDEQ, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

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

59. If the City elects to invoke the dispute resolution procedures set forth in Section [REF _Ref322450892 \r \h * MERGEFORMAT] (Dispute Resolution), it shall do so no later

than fifteen (15) days after receipt of the EPA's notice. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs [REF _Ref324245533 \r \h * MERGEFORMAT] and [REF _Ref324245536 \r \h * MERGEFORMAT]. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Consent Decree identified to the EPA and the Court.

XIII. **DISPUTE RESOLUTION**

60. 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. The City's failure to seek resolution of a dispute under this Section shall preclude the City from raising any such issue as a defense to an action by the United States to enforce any obligation of the City arising under this Decree.

61. 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 the City sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement between the United States and the City. The United States shall consult with the State during the period of informal negotiations. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below.

62. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State 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 City's position and any supporting documentation relied upon by the City.

63. The United States shall serve its Statement of Position within sixty (60) Days of receipt of the City's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. If within five (5) Days of receiving the United States' Statement of Position, the City requests to confer, the United States agrees to confer (in person or by telephone) with the City, but such a conference shall be concluded no later than twenty-one (21) Days after the issuance of the United States' Statement of Position. Within fourteen (14) Days after the conclusion of the conference, the United States will either reaffirm its Statement of Position or issue an amended Statement of Position. If the

United States fails to either reaffirm or amend its Statement of Position within this fourteen (14) Day period, its Statement of Position shall be deemed reaffirmed. The United States' Statement of Position shall be binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

64. The City may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section [REF _Ref322450461 \r \h * MERGEFORMAT] (Notices), a motion requesting judicial resolution of the dispute. If the City did not request to confer with the United States pursuant to preceding Paragraph, the City's motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. If the City requested to confer with the United States pursuant to the preceding Paragraph, the City's motion must be filed within ten (10) Days after the expiration of the fourteen (14) Day period following the conference during which the United States either reaffirms or amends its Statement of Position. The motion shall contain a written statement of the City's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

65. The United States shall respond to the City's motion within the time period allowed by the Local Rules of this Court. The United States shall consult with the State during preparation of its response. The City may file a reply memorandum, to the extent permitted by the Local Rules.

66. Standard of Review. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph [REF _Ref324245586 \n \h], the City shall bear the burden of demonstrating that its position complies with this Consent Decree and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and that it must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

67. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the City under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph [REF _Ref324245630 \r \h * MERGEFORMAT]. If the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section [REF _Ref322450920 \r \h * MERGEFORMAT] (Stipulated Penalties).

XIV. **INFORMATION COLLECTION AND RETENTION**

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

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;

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

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

e. assess the City's compliance with this Consent Decree.

69. Upon request, the City shall provide the EPA and MDEQ or their authorized representatives splits of any samples taken by the City. Upon request, the EPA and MDEQ shall provide the City splits of any samples taken by the EPA or MDEQ.

70. Until five (5) years after the termination of this Consent Decree, the City shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to the City's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, the City shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

71. At the conclusion of the information-retention period provided in the preceding Paragraph, the City shall notify the United States and the State at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, the City shall deliver any such documents, records, or other information to the EPA or MDEQ. The City may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the City asserts such a privilege, it shall provide the following: (a) a title for the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the City. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

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

to be provided under this Section is protected as "trade secrets" under Miss. Code Ann. Section 49-17-39. As to any information that the City seeks to protect as trade secrets under said Section 49-17-39, the City shall follow the procedures set forth in Section 49-17-39.

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

XV. **EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

74. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging of this Consent Decree.

75. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA, the MAWPCL, or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph [REF _Ref324245690 \r \h * MERGEFORMAT]. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the City's Sewer System, whether related to the violations addressed in this Consent Decree or otherwise.

76. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Sewer System or the City's violations, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph [REF _Ref324245690 \r \h * MERGEFORMAT].

77. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The City is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the City's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, the MAWPCL, or with any other provisions of federal, State, or local laws, regulations, or permits.

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

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

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

81. 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.

XVI. **COSTS**

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

XVII. **NOTICES**

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

As to the United States:
By Mail:
EES Case Management Unit
Re: DJ # 90-5-1-1-10964
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

By Email:
[HYPERLINK "mailto:eescdcopy.enrd@usdoj.gov"] Re: DJ # 90-5-1-1-10964

And

Chief, NPDES Enforcement and Permitting Branch
Water Protection Division
U.S Environmental Protection Agency, Region 4
ATTN: Richard Elliott
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8691

As to the EPA:
Chief, NPDES Enforcement and Permitting Branch
Water Protection Division
U.S Environmental Protection Agency, Region 4
ATTN: Richard Elliott
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8691

As to the State/MDEQ:
Chief, Environmental Compliance and Enforcement Division
Office of Pollution Control
Mississippi Department of Environmental Quality
P.O. Box 2261
Jackson, MS 39225-2261
(601) 961-5682

As to the City:
Mayor, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501

Director of Engineering, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4540

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

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

XVIII. **EFFECTIVE DATE**

86. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIX. **RETENTION OF JURISDICTION**

87. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections [REF _Ref322450968 \r \h * MERGEFORMAT] and [REF _Ref322450984 \r \h * MERGEFORMAT], or effectuating or enforcing compliance with the terms of this Decree.

XX. **MODIFICATION**

88. Except as otherwise set forth in Paragraphs [REF _Ref383531021 \w \h * MERGEFORMAT], [REF _Ref387753848 \r \h], or [REF _Ref387753878 \w \h] of this Consent Decree, 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. Non-material changes to this Consent Decree (including appendices) may be made by written agreement of the Parties without Court approval.

89. Any disputes concerning modification of this Decree shall be resolved pursuant to Section [REF _Ref322451014 \r \h * MERGEFORMAT] (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph [REF _Ref324245744 \r \h * MERGEFORMAT], 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).

XXI. **TERMINATION**

90. This Consent Decree may be terminated when the United States determines that the City has satisfactorily completed the requirements of Section [REF _Ref322451030 \r \h * MERGEFORMAT] (Compliance Requirements), provided the City has fulfilled all other obligations of this Consent Decree, including payment of the civil penalty and any accrued stipulated penalties as required by this Consent Decree not waived or reduced by the United States. The City may serve upon the United States a Request for Termination, certifying that the City has satisfied those requirements, together with all necessary supporting documentation.

91. Following receipt by the United States of the City's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the City has satisfactorily complied with the requirements for termination of

this Consent Decree. If the United States, after consultation with the State, agrees that the Decree may be terminated, the United States and the City shall submit, for the Court's approval, a joint stipulation terminating the Decree.

92. If the United States, after consultation with the State, does not agree that the Decree may be terminated, the City may invoke Dispute Resolution under Section [REF _Ref322451081 \r \h * MERGEFORMAT]. However, the City shall not seek Dispute Resolution of any dispute regarding termination until one hundred and twenty (120) Days after service of its Request for Termination.

XXII. **PUBLIC PARTICIPATION**

93. 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. The City and the State each consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the Parties in writing that it no longer supports entry of the Decree.

XXIII. **SIGNATORIES/SERVICE**

94. Each undersigned representative of the City, the State, the EPA, 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.

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

XXIV. **INTEGRATION**

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

agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXV. **FINAL JUDGMENT**

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

XXVI. **APPENDICES**

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

"Appendix A" is a list of completed COMSWIP sewer projects;

"Appendix B" is a list of the Early Action Projects;

"Appendix C" are maps of the Priority Areas;

"Appendix D" is the EPA Region 4 guidance on Capacity, Management, Operation, and Maintenance ("CMOM") programs;

"Appendix E" is the Supplemental Environmental Project, and

"Appendix F" is the list of SSOs for the initial monitoring devices.

Dated and entered this __ day of _____, 201_

_____
UNITED STATES DISTRICT JUDGE
Southern District of Mississippi

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE UNITED STATES OF AMERICA:

_____

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

_____

VALERIE K. MANN
DC Bar No. 440744
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611
Telephone: 202/616-8756
Facsimile: 202/616-2427
Email: Valerie.mann@usdoj.gov

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

United States Attorney
Southern District of Mississippi

_____

Assistant United States Attorney
Southern District of Mississippi
501 East Court Street
Suite 4.430
Jackson, Mississippi 39201

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

_____
MARY J. WILKES
Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Of Counsel:
WILLIAM B. BUSH, JR.
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, GA 30303

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

_____
MARK POLLINS
Division Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

_____
LOREN DENTON
Branch Chief
Municipal Enforcement Branch
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

_____
ROBERT D. FENTRESS
Attorney-Advisor
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi:

FOR PLAINTIFF STATE OF MISSISSIPPI BY AND THROUGH THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY AND THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY:

_____

GRETCHEN L. ZMITROVICH
MS Bar No. 101470
Senior Attorney
Office of Pollution Control
Mississippi Department of Environmental Quality
P.O. Box 2261
Jackson, MS 39225
Telephone: 601/961-5050
Facsimile: 601/961-5674
Email: [HYPERLINK "mailto:Gretchen_Zmitrovich@mdeq.ms.gov"]

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi:

FOR THE CITY OF HATTIESBURG:

_____

MAYOR ~~JOHNNY L. DUPREE~~
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501

Message

From: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
Sent: 3/6/2017 6:21:44 PM
To: Fentress, Robert [Fentress.Robert@epa.gov]
CC: Bush, William [Bush.William@epa.gov]
Subject: RE: Hattiesburg/ examples of SEP

Ex. 5 Attorney Client (AC)

From: Fentress, Robert [mailto:Fentress.Robert@epa.gov]
Sent: Monday, March 06, 2017 1:16 PM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>
Subject: RE: Hattiesburg/ examples of SEP

Valerie – **Ex. 5 Attorney Client (AC)**

Robert D. Fentress
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-7023
fentress.robert@epa.gov

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From: Mann, Valerie (ENRD) [mailto:Valerie.Mann@usdoj.gov]
Sent: Wednesday, January 11, 2017 2:47 PM
To: jmilner@brunini.com
Cc: Bush, William <Bush.William@epa.gov>; Fentress, Robert <Fentress.Robert@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Gretchen Zmitrovich <GZMITROVICH@mdeq.ms.gov>; Horsey, Maurice <Horsey.Maurice@epa.gov>
Subject: Hattiesburg/ examples of SEP

FOR SETTLEMENT PURPOSES ONLY

John,

I understand that you will be sending a SEP proposal imminently. In case this is of interest, attached are the relevant appendices from the Jackson, Miss CD and the Fort Smith, Arkansas CD, regarding a SEP for repair/replacement of defective private lines.

--Valerie Mann

Message

From: Elliott, Richard [Elliott.Richard@epa.gov]
Sent: 5/22/2017 7:05:47 PM
To: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]
CC: Bush, William [Bush.William@epa.gov]
Subject: RE: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

Ex. 5 Attorney Client (AC)

Richard Elliott, P.E., PMP
Environmental Engineer

From: Mann, Valerie (ENRD) [mailto:Valerie.Mann@usdoj.gov]
Sent: Thursday, May 11, 2017 1:51 PM
To: Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Cc: Bush, William <Bush.William@epa.gov>
Subject: FW: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

Ex. 5 Attorney Client (AC)

Thanks,
Valerie

From: Bush, William [mailto:Bush.William@epa.gov]
Sent: Wednesday, May 03, 2017 10:03 AM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>; Fentress, Robert <Fentress.Robert@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Gretchen Zmitrovich <GZMITROVICH@mdeq.ms.gov>; Gretchen_Zmitrovich@deq.state.ms.us
Subject: FW: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

From: John Milner [mailto:jmilner@brunini.com]
Sent: Tuesday, May 02, 2017 6:22 PM
To: 'Mann, Valerie (ENRD)' <Valerie.Mann@usdoj.gov>
Cc: Bush, William <Bush.William@epa.gov>
Subject: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

Valerie,

Please see the following responses to your prior action item requests and the attached deliverables that are currently available:

1. The City has asked to submit a letter to EPA and MDEQ setting forth its request and justification for a payment plan for the penalty. If City wants to pursue this, send ASAP. It would be helpful to provide as much detail as possible as to why the City feels this is necessary and the specific payment details regarding the number and timing of installments.

The City will provide a letter by May 17 which requests a payment plan in four equal installments during the following four months over the next two fiscal years:

November, 2017
May, 2018
November, 2018
May, 2019

2. The City will consider voluntarily submitting the SORP and ERP earlier than the current deadline set forth in the CD.

   The City is in the process of preparing the SORP and ERP and is definitely considering the voluntary submission of the SORP and ERP earlier than the CD deadline.

3. DOJ has proofed Appendices A, B and C and raised one suggested edit/question re boring. City owes a response.

   See the attached revised Appendices A, B and C.

4. The City will revise maps C -1 to label a portion of sewershed 36 and will revise C-2 to label a portion of sewershed 44.

   See the attached revised maps.

5. The City will correct the typo in paragraph 11 of Appendix A.

   See the attached revised Appendix A.

6. The City will remove the dates under the title pages of Appendices A, B and C.

   See the attached revised Appendices A, B and C.

7. The City will send out a complete set of Appendices A, B and C once these final changes are made.

   See the attached revised Appendices A, B and C.

8. The EPA will send out a markup of Appendix E for the SEP.

   The City has reviewed the DOJ April 5 markup of the Appendix E for the SEP and has no changes to propose to the markup.

9. The City will contemplate a proposal for an appropriate deadline for SEP completion and schedule for escrow account deposits.

   The City will provide this proposal by May 17.

10. The City will send out the SSO list in an excel spreadsheet (John, Bill B could not find an email where you sent that already so please resend).

    This list will be sent to you, as well as additional documents, tomorrow (May 3) after a meeting in Hattiesburg with the City team.

11. The City will submit to the EPA and MDEQ a summary of its community engagement efforts to date.

A summary will be provided by May 10, which will reflect the following community engagement meetings:

East Jerusalem Neighborhood association on 4/14/16
Arcadia sunset neighborhood association meeting on 4/21/16
Parkhaven neighborhood association meeting on 6/9/16
Grace Christian Neighborhood on 8/11/16 at 6pm
The Avenues Neighborhood Association on 8/22/16 at 6pm
The Cottages Neighborhood Association on 11/01/16 at 6pm
Highland Neighborhood Association on 11/14/16 at 6 pm (Reggie Barrino was in attendance)

Please see the attached power point presentation that was presented at these meetings.

12. The City will submit draft language for new Paragraph 23.k – Chronic SSO Advanced Monitoring Program to replace current Paragraph 23.a.(6) using EPA's original language as much as possible.

    The City team is meeting tomorrow and next week to address this issue and will submit proposed language for this provision by May 17.

13. The City will provide to DOJ the information for whom penalty payment instructions should be sent as set forth in Paragraph 26 of the CD.

    The City will provide these instructions by May 17.

Valerie, in addition to these action items, as I have mentioned to you and Bill earlier, the City is reviewing the Capacity Assurance Program provisions of the CD, Paragraph 23.i (pp. 35 – 40 of your latest CD redlined draft) and will provide comments on issues related to these provisions by May 17 after meetings tomorrow and next week.

If you have any questions concerning this message or the attachments, please feel free to contact me. Thanks

John

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

BRUNINI

BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201
Post Office Drawer 119, Jackson, MS 39205

www.brunini.com
Bio / V-Card

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Message

From: John Milner [jmilner@brunini.com]
Sent: 5/22/2017 6:59:32 PM
To: 'Mann, Valerie (ENRD)' [Valerie.Mann@usdoj.gov]
CC: Bush, William [Bush.William@epa.gov]
Subject: RE: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

Will do -- the Mayor was in DC for the Congressional testimony for the National Urban League and I'm trying to make contact with him this afternoon.

John

From: Mann, Valerie (ENRD) [mailto:Valerie.Mann@usdoj.gov]
Sent: Monday, May 22, 2017 1:27 PM
To: John Milner
Cc: Bush, William
Subject: RE: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

John,
Please send overdue items ASAP.
--Valerie

From: Mann, Valerie (ENRD)
Sent: Thursday, May 11, 2017 10:54 AM
To: 'John Milner' <jmilner@brunini.com>
Cc: 'Bush, William' <Bush.William@epa.gov>; jmilner@brunini.com; Fentress, Robert <Fentress.Robert@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Gretchen Zmitrovich <GZMITROVICH@mdeq.ms.gov>
Subject: RE: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

Settlement Communication

John,
You asked for an update to the action items.
Let me know if I missed something or got something wrong. Thanks.

A. If City still wants to pursue a payment plan for civil penalty, City to send justification letter with proposal of schedule (cannot use calendar dates) no later than May 19.
B. City to review draft SORP and ERP, then determine whether voluntarily submit them earlier than current deadline in draft CD.
C. DOJ to finish review of appendices.
D. City to respond by May 12 on SEP escrow proposed dates and on contact info for penalty payment instructions.
E. City to send letter re community engagement efforts by May 12.
F. EPA Program to review SSO list provided in May 3 email.
G. City to provide chronic SSO program rewrite by May 19.
H. All to review Bill B's banking credit language, revised Paragraph 23.i(9)(i), in his May 10 email, and provide feedback ASAP.
I. City to provide comments on CAP Para 23.i by May 19.

From: John Milner [mailto:jmilner@brunini.com]
Sent: Tuesday, May 02, 2017 6:22 PM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>
Cc: Bush.William@epa.gov
Subject: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

Valerie,

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   May, 2018
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   May, 2019

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    Parkhaven neighborhood association meeting on 6/9/16
    Grace Christian Neighborhood on 8/11/16 at 6pm
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    The Cottages Neighborhood Association on 11/01/16 at 6pm
    Highland Neighborhood Association on 11/14/16 at 6 pm (Reggie Barrino was in attendance)

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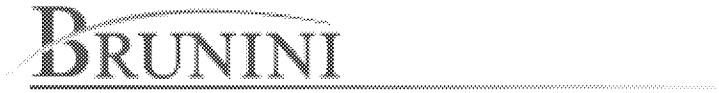
If you have any questions concerning this message or the attachments, please feel free to contact me. Thanks

John

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902



BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201
Post Office Drawer 119, Jackson, MS 39205

www.brunini.com
Bio / V-Card

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Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 6/3/2019 9:24:37 PM
To: Bragan, Mary Jo [Bragan.Maryjo@epa.gov]; Chavez, Araceli [Chavez.Araceli@epa.gov]; Elliott, Richard [Elliott.Richard@epa.gov]
Subject: FW: Hattiesburg SEP

fyi

From: Gonzalez, Sarah
Sent: Monday, June 3, 2019 4:31 PM
To: Bush, William <Bush.William@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: Hattiesburg SEP

Suzanne and Bill,

First, welcome back to enforcement Bill! Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

I hope this helps clarify. Give me a call if you have any further questions!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

It is important to think beyond yourself.

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Please consider the environment before printing this email

Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 7/22/2019 3:35:59 PM
To: Rubini, Suzanne [Rubini.Suzanne@epa.gov]
Subject: FW: OCE/DOJ Monthly Call -- today 1:00 to 2:30

From: Rae, Sarah
Sent: Friday, July 19, 2019 10:25 AM
To: Bush, William <Bush.William@epa.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Bill,

Ex. 5 Attorney Client (AC)

I hope this helps!

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Bush, William
Sent: Friday, July 19, 2019 10:09 AM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>; Bush, William <Bush.William@epa.gov>
Subject: RE: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Ex. 5 Attorney Client (AC)

From: Rae, Sarah
Sent: Friday, July 19, 2019 9:26 AM

To: Bush, William <Bush.William@epa.gov>
Subject: RE: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Bill,

Sorry I missed your call -I am on another case team call. It is my understanding that Susan has a draft of Jeff's SEP memo and as expected he dug in further in the memo (I have not seen the memo). Rosemarie and Susan met at 5pm yesterday to discuss Jeff's draft SEP memo – Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

I hope this helps!

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Bush, William
Sent: Friday, July 19, 2019 9:21 AM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: FW: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Curious what happened outside the call. See Suzanne's take on the OECA/DOJ call yesterday.

From: Armor, Suzanne
Sent: Friday, July 19, 2019 7:32 AM
To: Bush, William <Bush.William@epa.gov>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: RE: OCE/DOJ Monthly Call -- today 1:00 to 2:30

There is nothing new to report yet. Leif raised those cases, but OECA is still waiting on DOJ's SEP memo.

From: Bush, William
Sent: Thursday, July 18, 2019 5:37 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: FW: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Ex. 5 Attorney Client (AC)

From: Palmer, Leif
Sent: Thursday, July 18, 2019 10:14 AM
To: Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>; Michuda, Colleen E. <Michuda.Colleen@epa.gov>; Nowell, Valerie <Nowell.Valerie@epa.gov>
Cc: R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Bush, William <Bush.William@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>
Subject: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Hello – there is a monthly OCE/DOJ call today from 1:00 to 2:30 where, I hope, we will get an update on SEP issues from DOJ. I've not seen an agenda.

Ex. 6 Personal Privacy (PP) and I will only be able to listen to the first hou Ex. 5 Attorney Client (AC)
Ex. 5 Attorney Client (AC)

Can one of you sit in on the call? It is OK to take it from home or at your desk.

I'll just need someone to let me and Susan know if anything profound comes out of it – it is a pretty high level at DOJ (Bruce Gelber) who is above Henry Friedman on the DOJ org chart.

Let me know and I'll forward you the invite. If more than one of you wants to listen to the call that is OK with me.

Leif Palmer
Regional Counsel
US EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
(404) 562-9542
(770) 856-2876 (cell)

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Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 6/6/2018 7:26:09 PM
To: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]; Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
CC: Bush, William [Bush.William@epa.gov]
Subject: FW: Hattiesburg SSOs Draft Consent Decree
Attachments: Hattiesburg CD 6-6-18.docx redlined from previous EPA 2-14-18 draft.docx

Ex. 5 AC/AWP/DP

From: Bush, William
Sent: Tuesday, June 05, 2018 6:40 PM
To: Zapata, Cesar <Zapata.Cesar@epa.gov>; O'Lone, Dan <Olone.Dan@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Cc: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Bush, William <Bush.William@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: FW: Hattiesburg SSOs Draft Consent Decree

Ex. 5 AC/AWP/DP

From: John Milner [mailto:jmilner@brunini.com]
Sent: Tuesday, June 05, 2018 2:16 PM
To: Bush, William <Bush.William@epa.gov>
Subject: FW: Hattiesburg SSOs Draft Consent Decree

Bill, following up on our conversation and your e-mail of May 1, as well as my e-mails to you of May 15 and May 23, below are the updated City's responses and requests regarding the three consent decree issues we discussed:

Item 1. Gravity Sewer Operations and Maintenance ("GSOM") Program [Draft CD Paragraph 23.e.]

City's response: As stated in my May 15 e-mail, the City agrees to produce a City-wide GSOM program, with the condition that EPA agree to expand the time for production of the GSOM Program by 12 months – from 24

months after the Effective Date of the CD ("ED") to 36 months after the ED. The City requests that EPA agree to this change in draft CD Paragraph 23.e.

Item 2. Chronic SSO Advanced Remote Monitoring ("GSARM") Program [Draft CD Paragraph 23.i.]

City's response: As stated in my May 15 e-mail, the City requests that EPA agree to the scope of the GSARM Program as being only the Priority Areas, rather than City-wide. As requested, I provided in my May 23 e-mail information that confirms (1) the location of the existing chronic SSOs in the Priority Areas, (2) the location of those chronic SSOs outside the Priority Areas and (3) a description of the pending projects to eliminate the chronic SSOs that are outside the Priority Areas.

Attached to my May 23 e-mail is a map of the known chronic SSOs in the City of Hattiesburg. The only noted SSOs that are outside of the Priority Areas are numbers 33, 34 and 36 as shown on the map. Items 33 and 34 have Early Action Capital Improvement Projects associated with them. These are listed in Appendix B of the CD. I attached Appendix B, together with the Appendix B map, to my May 23 email for your convenience.

As stated in my May 23 e-mail:

Site #34 is noted in Project #5 as the sewer main from W. 4th Street to the Longleaf Trace. Site #36 is noted in Project #1 as the sewer main at Meadowbrook Drive. There is no need to monitor these locations since the City has projects planned to address them. Site #33 was added to the list as the result of a major flood of the Leaf River. There is no evidence of it overflowing before or after that event. Therefore, the City has not deemed it to be "chronic" or in need of remote monitoring.

Item 3. Hydraulic modeling in the Priority Areas Evaluation Report/Rehabilitation Plan and proposed "Deliverable" amendments [applicable provisions of Paragraphs 21 and 23 of the Draft CD]

City's response: The following proposed revisions to the draft Consent Decree (paragraphs 1 through 6 below) are based on the City's redlined version that was e-mailed to you on April 4, 2018 ("April 4 City Redlined CD Draft"). Please note that:

(1) Words added by the City (underlined) and words deleted by the City (strike through) that are in red below were already in the April 4 City Redlined CD Draft and are being retained as additions and deletions proposed by the City; and

(2) additional words and deleted words to the selected relevant provisions of April 4 City Redlined CD Draft that are being proposed by the City for the first time with regard to these three open Items are set forth in blue new underlined words and blue strike-through of deleted words:

1. *Paragraph 21 (page 14 of City's April 4, 2018 redlined version of CD draft):*

The Parties acknowledge and agree that this Consent Decree does not require the City to develop or implement a hydraulic model for purposes of implementing the Priority Areas SSER Work Plan but the City may choose to use some modeling tools if it deems it appropriate~~.~~, which tools are not required "Deliverables" under this Consent Decree. If the City chooses to implement a hydraulic model for the Priority Areas, such hydraulic model is not subject to EPA review or approval and shall not be a basis for enforcement action.

City's comment: The added language tracks the language of your May 1 explanatory e-mail, except that the language, "and shall not be a basis for enforcement", has been added as a clarification. Since any hydraulic model that the City may choose to implement for the Priority Areas is not subject to EPA review or approval, then such a hydraulic model is clearly not a basis for enforcement action. This added language is applicable throughout the Consent Decree so it does not need to be repeated in other provisions of the Consent Decree that addresses hydraulic modeling.

2. *Paragraph 21.a. (6) (page 14 of City's April 4, 2018 redlined version of CD draft):*

(6) A summary of activities undertaken to configure any hydraulic model that the City may choose to implement for the Priority Areas, as described in Paragraph 21 above; ~~[which summary is not a "Deliverable" (as defined in Section V.8.m. above) and not subject to the provisions of Section VI., paragraphs 9-17, above];~~

City's comment: The City agreed to delete the stricken parenthetical as you requested. The language, "as described in Paragraph 21 above" confirms the applicability of the added language discussed above: "*Paragraph 21 (page 14 of City's April 4, 2018 redlined version of CD draft)*".

3. *Paragraph 21.a. (7) (page 15 of City's April 4, 2018 redlined version of CD draft):*

(7) A summary of activities undertaken to calibrate any hydraulic model that the City may choose to implement for the Priority Areas, as described in Paragraph 21 above, ~~and certification that any such hydraulic model has been calibrated (including the performance of sensitivity analyses) and verified using actual system data (e.g., flow data) from permanent and temporary sewage flow monitoring points in the WCTS (this certification shall include a description of the methodology, data collected, and results of any hydraulic model calibrations and verifications);[which summary is not a Deliverable and not subject to Section VI., paragraphs 9-17, above].~~

City's comment: The City agreed to delete the stricken parenthetical as you requested. The language, "as described in Paragraph 21 above" confirms the applicability of the added language discussed above: "*Paragraph 21 (page 14 of City's April 4, 2018 redlined version of CD draft)*". The certification language is still stricken, as it was in the April 4 City Redlined CD Draft, since, as your May 1 e-mailed confirmed, the information concerning any hydraulic model that the City chooses to implement for the Priority Areas "simply requires the City to summarize how any such model was created and the results of such model that would necessarily inform the City's assessment and rehab conclusions." Certification is not an activity that is consistent with the context of this "summary information".

4. *Paragraph 23.c. (10) (b) (page 24 of City's April 4, 2018 redlined version of CD draft):*

(b) Streamlining of the GIS data entry process for new assets, including electronic as-built data and necessary standards so that all new assets are added to the GIS system within ninety (90) calendar days of their activation in the field. Included shall be the development of a system to interface with any hydraulic computer model that the City may choose to implement for the Priority Areas, as described in Paragraph 21 above, so that the information can be efficiently exported to ~~the~~ such hydraulic computer model ~~[which system and hydraulic computer model are not Deliverables and are not subject to Section VI., paragraphs 9-17, above];~~

City's comment: The City agreed to delete the stricken parenthetical as you requested. The language, "as described in Paragraph 21 above" confirms the applicability of the added language discussed above: "*Paragraph 21 (page 14 of City's April 4, 2018 redlined version of CD draft)*".

5. *Paragraph 23.d. (2) (page 25 of City's April 4, 2018 redlined version of CD draft):*

(2) Be designed in such a manner so as to allow electronic integration with any computer-based collection system model that the City may choose to implement for the Priority Areas, as described in Paragraph 21 above, and computer-based operations and maintenance information management system ~~[which model is not a Deliverable and is not subject to Section VI., paragraphs 9-17, above];~~

City's comment: The City agreed to delete the stricken parenthetical as you requested. The language, "as described in Paragraph 21 above" confirms the applicability of the added language discussed above: "*Paragraph 21 (page 14 of City's April 4, 2018 redlined version of CD draft)*".

6. *Paragraph 23.i. (3) (page 35 of City's April 4, 2018 redlined version of CD draft):*

(3) If the City elects to monitor multiple SSO locations through a single remote monitoring device, the City shall expeditiously inspect all such related SSO locations when the applicable remote monitoring device indicates that the specified Thresholds have been attained and/or exceeded. The City shall also evaluate the benefits of this technology and other remote wastewater detection technologies for continued use within the WCTS to increase efficiency in SSO prevention/response and to enhance any hydraulic modeling efforts that the City may choose to implement within the Priority Areas, as described in Paragraph 21 above. ~~[which hydraulic modeling efforts are not Deliverables and are not subject to Section VI, paragraphs 9-17, above].~~

City's comment: The City agreed to delete the stricken parenthetical as you requested. The language, "as described in Paragraph 21 above" confirms the applicability of the added language discussed above: "*Paragraph 21 (page 14 of City's April 4, 2018 redlined version of CD draft)*".

As I stated in my May 23 message, I hope we can reach a resolution of these outstanding CD draft issues soon and move on to preparation of a final clean draft of the CD. If you have any questions concerning this message, please feel free to contact me. Thanks

John

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201
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Bio / V-Card

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Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 6/3/2019 9:21:38 PM
To: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]; Armor, Suzanne [Armor.Suzanne@epa.gov]
Subject: RE: Hattiesburg SEP

Yes. Thank you very helpful.

From: Gonzalez, Sarah
Sent: Monday, June 3, 2019 4:31 PM
To: Bush, William <Bush.William@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: Hattiesburg SEP

Suzanne and Bill,

First, welcome back to enforcement Bill! Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

I hope this helps clarify. Give me a call if you have any further questions!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

It is important to think beyond yourself.

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Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 6/3/2019 8:07:19 PM
To: Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gordon, Scott [Gordon.Scott@epa.gov]
CC: Bush, William [Bush.William@epa.gov]
Subject: FW: Hattiesburg SEP

Ex. 5 Attorney Client (AC)

From: Armor, Suzanne
Sent: Monday, June 3, 2019 3:21 PM
To: Bush, William <Bush.William@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Gordon, Scott <Gordon.Scott@epa.gov>
Subject: FW: Hattiesburg SEP

Per our discussion earlier, see email below from my OECA counterpart Ex. 5 Attorney Client (AC)

From: Gonzalez, Sarah
Sent: Thursday, May 30, 2019 5:09 PM
To: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: Hattiesburg SEP

Valerie and Suzanne,

Ex. 5 AC/AWP/DP

Ex. 5 Attorney Client (AC)

I am off tomorrow but I will be back in the office on Monday. Have a good weekend!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Thursday, May 30, 2019 10:23 AM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: Hattiesburg SEP

Sarah,

Ex. 5 AC/DP

From: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Sent: Wednesday, May 15, 2019 2:24 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>
Subject: RE: Hattiesburg SEP

Ex. 5 AC/DP

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Armor, Suzanne
Sent: Wednesday, May 15, 2019 1:09 PM
To: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Hattiesburg SEP

Ex. 5 Attorney Client (AC)

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Wednesday, May 15, 2019 12:50 PM

To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: Hattiesburg SEP

Ex. 5 Attorney Client (AC)

Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 7/19/2019 2:35:50 PM
To: Palmer, Leif [Palmer.Leif@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Gordon, Scott [Gordon.Scott@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: FW: OCE/DOJ Monthly Call -- today 1:00 to 2:30

fyi

From: Rae, Sarah
Sent: Friday, July 19, 2019 10:25 AM
To: Bush, William <Bush.William@epa.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Bill,

Yes I am very familiar – Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

I hope this helps!

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Bush, William
Sent: Friday, July 19, 2019 10:09 AM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>; Bush, William <Bush.William@epa.gov>
Subject: RE: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Ex. 5 Attorney Client (AC)

From: Rae, Sarah
Sent: Friday, July 19, 2019 9:26 AM
To: Bush, William <Bush.William@epa.gov>
Subject: RE: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Bill,

Sorry I missed your call -I am on another case team call. It is my understanding that Susan has a draft of Jeff's SEP memo and as expected he dug in further in the memo (I have not seen the memo). Rosemarie and Susan met at 5pm yesterday to discuss Jeff's draft SEP memo - Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

I hope this helps!

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Bush, William
Sent: Friday, July 19, 2019 9:21 AM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: FW: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Curious what happened outside the call. See Suzanne's take on the OECA/DOJ call yesterday.

From: Armor, Suzanne
Sent: Friday, July 19, 2019 7:32 AM
To: Bush, William <Bush.William@epa.gov>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: RE: OCE/DOJ Monthly Call -- today 1:00 to 2:30

There is nothing new to report yet. Leif raised those cases, but OECA is still waiting on DOJ's SEP memo.

From: Bush, William
Sent: Thursday, July 18, 2019 5:37 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: FW: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Ex. 5 Attorney Client (AC)

From: Palmer, Leif
Sent: Thursday, July 18, 2019 10:14 AM
To: Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>; Michuda, Colleen E. <Michuda.Colleen@epa.gov>; Nowell, Valerie <Nowell.Valerie@epa.gov>
Cc: R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Bush,

William <Bush.William@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>
Subject: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Hello – there is a monthly OCE/DOJ call today from 1:00 to 2:30 where, I hope, we will get an update on SEP issues from DOJ. I've not seen an agenda.

Ex. 6 Personal Privacy (PP) I will only be able to listen to the first hour Ex. 5 Attorney Client (AC)
Ex. 5 Attorney Client (AC)

Can one of you sit in on the call? It is OK to take it from home or at your desk.

I'll just need someone to let me and Susan know if anything profound comes out of it – it is a pretty high level at DOJ (Bruce Gelber) who is above Henry Friedman on the DOJ org chart.

Let me know and I'll forward you the invite. If more than one of you wants to listen to the call that is OK with me.

Leif Palmer
Regional Counsel
US EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
(404) 562-9542
(770) 856-2876 (cell)

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Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 5/24/2018 7:50:29 PM
To: Sayre, Dennis [Sayre.Dennis@epa.gov]
Subject: RE: City of Hattiesburg, MS - draft SSOs consent decree
Attachments: City's SSOs CD draft 4-3-18 - REDLINE (02918847) (002).pdf; Hattiesburg CD 2-14-18.docx

The first one is their mark up.
The second one is our last draft.

-----Original Message-----
From: Sayre, Dennis
Sent: Thursday, May 24, 2018 6:54 AM
To: Bush, William <Bush.William@epa.gov>
Subject: RE: City of Hattiesburg, MS - draft SSOs consent decree

Can you send me the latest version so I know we're on the same draft?

Dennis J. Sayre
Municipal & Industrial Enforcement Section
(404) 562-9756

-----Original Message-----
From: Bush, William
Sent: Wednesday, May 23, 2018 4:02 PM
To: Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: FW: City of Hattiesburg, MS - draft SSOs consent decree

-----Original Message-----
From: John Milner [mailto:jmilner@brunini.com]
Sent: Wednesday, May 23, 2018 2:41 PM
To: Bush, William <Bush.William@epa.gov>
Subject: Fwd: City of Hattiesburg, MS - draft SSOs consent decree

Bill,

Responding to your message today, I'm resending to you my May 15 message below in case you didn't receive it. In that message, I mentioned that I was meeting with Mayor Barker and the City team today. I just completed that meeting and am traveling back to Jackson now. I will prepare and send you a message either tomorrow or Friday after I review it with Mayor Barker and the City team. On the basis of that message, I hope we can reach a resolution of the outstanding CD draft issues and move to preparation of a final clean draft of the CD. Thanks again for your May 1 e-mail - it was very helpful.

John

Sent from my iPhone

John E. Milner
E: jmilner@brunini.com<mailto:jmilner@brunini.com>
P: 601-960-6842 F: 601-960-6902

[http://www.brunini.com/wp-content/uploads/2016/06/BGGH-FullLogo.gif]

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www.brunini.com<http://www.brunini.com/>
Bio<http://www.brunini.com/attorneys-31.html> / V-Card<http://www.brunini.com/vcard-31.vcf>

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Begin forwarded message:

From: John Milner <jmilner@brunini.com<mailto:jmilner@brunini.com>>
Date: May 15, 2018 at 11:02:38 AM CDT
To: "Bush.William@epa.gov<mailto:Bush.William@epa.gov>"
<Bush.William@epa.gov<mailto:Bush.William@epa.gov>>
Subject: City of Hattiesburg, MS - draft SSOs consent decree

Bill, following up on our conversation and your e-mail of May 1, below are the City's responses and requests regarding the three consent decree issues we discussed:

Item 1. Gravity Sewer Operations and Maintenance ("GSOM") Program [Draft CD Paragraph 23.e.]

City's response: The City agrees to produce a City-wide GSOM program, with the condition that EPA agree to expand the time for production of the GSOM Program by 12 months – from 24 months after the Effective Date of the CD ("ED") to 36 months after the ED. The City requests that EPA agree to this change in draft CD Paragraph 23.e.

Item 2. Chronic SSO Advanced Remote Monitoring ("GSARM") Program [Draft CD Paragraph 23.i.]

City's response: The City requests that EPA agree to the scope of the GSARM Program as being only the Priority Areas, rather than City-wide. As requested, I am providing the following information that confirms (1) the location of the existing chronic SSOs in the Priority Areas, (2) the location of those chronic SSOs outside the Priority Areas and (3) a description of the pending projects to eliminate the chronic SSOs that are outside the Priority Areas.

Attached is a map of the known chronic SSOs in the City of Hattiesburg. The only noted SSO's that are outside of the Priority Areas are numbers 33, 34 and 36 as shown on the map. Items 33 and 34 have Early Action Capital Improvement Projects associated with them. These are listed in Appendix B of the CD. I have attached Appendix B, together with the Appendix B map, to this email for your convenience.

Site #34 is noted in Project #5 as the sewer main from W. 4th Street to the Longleaf Trace. Site #36 is noted in Project #1 as the sewer main at Meadowbrook Drive. There is no need to monitor these locations since the City has projects planned to address them. Site #33 was added to the list as the result of a major flood of the Leaf River. There is no evidence of it overflowing before or after that event. Therefore, the City has not deemed it to be "chronic" or in need of remote monitoring.

Item 3. Hydraulic modeling in the Priority Areas Evaluation Report/Rehabilitation Plan [Draft CD Paragraph 21] and "Deliverable" amendments

City's response: The Mayor and City team are meeting to discuss this issue on Wednesday, May 23 (delayed due to the Mayor's travel schedule). I will provide the Mayor's response shortly after the May 23 meeting.

Thanks for the discussion regarding these issues and for your helpful May 1 e-mail. If you have any questions concerning the attachments or are not able to access them, please feel free to contact me.

John

Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 6/7/2018 5:13:12 PM
To: Sayre, Dennis [Sayre.Dennis@epa.gov]
Subject: FW: Hattiesburg SSOs Draft Consent Decree
Attachments: Hattiesburg CD 6-6-18.docx redlined from previous EPA 2-14-18 draft.docx

Sorry I forgot to copy you Dennis.

From: Bush, William
Sent: Tuesday, June 05, 2018 6:40 PM
To: Zapata, Cesar <Zapata.Cesar@epa.gov>; O'Lone, Dan <Olone.Dan@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Cc: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Bush, William <Bush.William@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: FW: Hattiesburg SSOs Draft Consent Decree

Ex. 5 AC/AWP/DP

From: John Milner [mailto:jmilner@brunini.com]
Sent: Tuesday, June 05, 2018 2:16 PM
To: Bush, William <Bush.William@epa.gov>
Subject: FW: Hattiesburg SSOs Draft Consent Decree

Bill, following up on our conversation and your e-mail of May 1, as well as my e-mails to you of May 15 and May 23, below are the updated City's responses and requests regarding the three consent decree issues we discussed:

Item 1. Gravity Sewer Operations and Maintenance ("GSOM") Program [Draft CD Paragraph 23.e.]

City's response: As stated in my May 15 e-mail, the City agrees to produce a City-wide GSOM program, with the condition that EPA agree to expand the time for production of the GSOM Program by 12 months – from 24 months after the Effective Date of the CD ("ED") to 36 months after the ED. The City requests that EPA agree to this change in draft CD Paragraph 23.e.

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City's response: As stated in my May 15 e-mail, the City requests that EPA agree to the scope of the GSARM Program as being only the Priority Areas, rather than City-wide. As requested, I provided in my May 23 e-mail information that confirms (1) the location of the existing chronic SSOs in the Priority Areas, (2) the location of those chronic SSOs outside the Priority Areas and (3) a description of the pending projects to eliminate the chronic SSOs that are outside the Priority Areas.

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As stated in my May 23 e-mail:

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Item 3. Hydraulic modeling in the Priority Areas Evaluation Report/Rehabilitation Plan and proposed "Deliverable" amendments [applicable provisions of Paragraphs 21 and 23 of the Draft CD]

City's response: The following proposed revisions to the draft Consent Decree (paragraphs 1 through 6 below) are based on the City's redlined version that was e-mailed to you on April 4, 2018 ("April 4 City Redlined CD Draft"). Please note that:

(1) Words added by the City (underlined) and words deleted by the City (strike through) that are in red below were already in the April 4 City Redlined CD Draft and are being retained as additions and deletions proposed by the City; and

(2) additional words and deleted words to the selected relevant provisions of April 4 City Redlined CD Draft that are being proposed by the City for the first time with regard to these three open Items are set forth in blue new underlined words and blue strike-through of deleted words:

1. *Paragraph 21 (page 14 of City's April 4, 2018 redlined version of CD draft):*

The Parties acknowledge and agree that this Consent Decree does not require the City to develop or implement a hydraulic model for purposes of implementing the Priority Areas SSER Work Plan but the City may choose to use some modeling tools if it deems it appropriate, which tools are not required "Deliverables" under this Consent Decree. If the City chooses to implement a hydraulic model for the Priority Areas, such hydraulic model is not subject to EPA review or approval and shall not be a basis for enforcement action.

City's comment: The added language tracks the language of your May 1 explanatory e-mail, except that the language, "and shall not be a basis for enforcement", has been added as a clarification. Since any hydraulic model that the City may choose to implement for the Priority Areas is not subject to EPA review or approval, then such a hydraulic model is clearly not a basis for enforcement action. This added language is applicable throughout the Consent Decree so it does not need to be repeated in other provisions of the Consent Decree that addresses hydraulic modeling.

2. *Paragraph 21.a. (6) (page 14 of City's April 4, 2018 redlined version of CD draft):*

(6) A summary of activities undertaken to configure any hydraulic model that the City may choose to implement for the Priority Areas, as described in Paragraph 21 above; ~~[which summary is not a "Deliverable" (as defined in Section V.8.m. above) and not subject to the provisions of Section VI., paragraphs 9-17, above];~~

City's comment: The City agreed to delete the stricken parenthetical as you requested. The language, "as described in Paragraph 21 above" confirms the applicability of the added language discussed above: "*Paragraph 21 (page 14 of City's April 4, 2018 redlined version of CD draft)*".

3. *Paragraph 21.a. (7) (page 15 of City's April 4, 2018 redlined version of CD draft):*

(7) A summary of activities undertaken to calibrate any hydraulic model that the City may choose to implement for the Priority Areas, as described in Paragraph 21 above, ~~and certification that any such hydraulic model has been calibrated (including the performance of sensitivity analyses) and verified using actual system data (e.g., flow data) from permanent and temporary sewage flow monitoring points in the WCTS (this certification shall include a description of the methodology, data collected, and results of any hydraulic model calibrations and verifications)~~;~~[which summary is not a Deliverable and not subject to Section VI., paragraphs 9-17, above].~~

City's comment: The City agreed to delete the stricken parenthetical as you requested. The language, "as described in Paragraph 21 above" confirms the applicability of the added language discussed above: "*Paragraph 21 (page 14 of City's April 4, 2018 redlined version of CD draft)*". The certification language is still stricken, as it was in the April 4 City Redlined CD Draft, since, as your May 1 e-mailed confirmed, the information concerning any hydraulic model that the City chooses to implement for the Priority Areas "simply requires the City to summarize how any such model was created and the results of such model that would necessarily inform the City's assessment and rehab conclusions." Certification is not an activity that is consistent with the context of this "summary information".

4. *Paragraph 23.c. (10) (b) (page 24 of City's April 4, 2018 redlined version of CD draft):*

(b) Streamlining of the GIS data entry process for new assets, including electronic as-built data and necessary standards so that all new assets are added to the GIS system within ninety (90) calendar days of their activation in the field. Included shall be the development of a system to interface with any hydraulic computer model that the City may choose to implement for the Priority Areas, as described in Paragraph 21 above, so that the information can be efficiently exported to ~~the~~ such hydraulic computer model~~[which system and hydraulic computer model are not Deliverables and are not subject to Section VI., paragraphs 9-17, above];~~

City's comment: The City agreed to delete the stricken parenthetical as you requested. The language, "as described in Paragraph 21 above" confirms the applicability of the added language discussed above: "*Paragraph 21 (page 14 of City's April 4, 2018 redlined version of CD draft)*".

5. *Paragraph 23.d. (2) (page 25 of City's April 4, 2018 redlined version of CD draft):*

(2) Be designed in such a manner so as to allow electronic integration with any computer-based collection system model that the City may choose to implement for the Priority Areas, as described in Paragraph 21 above, and computer-based operations and maintenance information management system ~~[which model is not a Deliverable and is not subject to Section VI., paragraphs 9-17, above];~~

City's comment: The City agreed to delete the stricken parenthetical as you requested. The language, "as described in Paragraph 21 above" confirms the applicability of the added language discussed above: "*Paragraph 21 (page 14 of City's April 4, 2018 redlined version of CD draft)*".

6. *Paragraph 23.i. (3) (page 35 of City's April 4, 2018 redlined version of CD draft):*

(3) If the City elects to monitor multiple SSO locations through a single remote monitoring device, the City shall expeditiously inspect all such related SSO locations when the applicable remote monitoring device indicates that the specified Thresholds have been attained and/or exceeded. The City shall also evaluate the benefits of this technology and other remote wastewater detection technologies for continued use within the WCTS to increase efficiency in SSO prevention/response and to enhance any hydraulic modeling efforts that the City may choose to implement within the Priority Areas, as described in Paragraph 21 above. ~~[which hydraulic modeling efforts are not Deliverables and are not subject to Section VI, paragraphs 9-17, above].~~

City's comment: The City agreed to delete the stricken parenthetical as you requested. The language, "as described in Paragraph 21 above" confirms the applicability of the added language discussed above: "*Paragraph 21 (page 14 of City's April 4, 2018 redlined version of CD draft)*".

As I stated in my May 23 message, I hope we can reach a resolution of these outstanding CD draft issues soon and move on to preparation of a final clean draft of the CD. If you have any questions concerning this message, please feel free to contact me. Thanks

John

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

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190 East Capitol St, Suite 100, Jackson, MS 39201
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Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 7/19/2019 1:39:54 PM
To: Palmer, Leif [Palmer.Leif@epa.gov]
CC: Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Gordon, Scott [Gordon.Scott@epa.gov]; Armor, Suzanne [Armor.Suzanne@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Bush, William [Bush.William@epa.gov]
Subject: RE: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Thanks. What I asked Sarah was what happened after the OECA/DOJ call yesterday at which (as reported by Suzanne) Ex. 5 AC/AWP/DP

Ex. 5 AWP/DP

Will let you know what she says.

From: Palmer, Leif
Sent: Friday, July 19, 2019 9:32 AM
To: Bush, William <Bush.William@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Gordon, Scott <Gordon.Scott@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Ex. 5 AWP/DP

Sorry Suzanne.

From: Bush, William
Sent: Friday, July 19, 2019 9:31 AM
To: Palmer, Leif <Palmer.Leif@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Gordon, Scott <Gordon.Scott@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: FW: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Explanation from OECA.

From: Rae, Sarah
Sent: Friday, July 19, 2019 9:26 AM
To: Bush, William <Bush.William@epa.gov>
Subject: RE: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Bill,

Sorry I missed your call -I am on another case team call. It is my understanding that Susan has a draft of Jeff's SEP memo and as expected he dug in further in the memo (I have not seen the memo). Rosemarie and Susan met at 5pm yesterday to discuss Jeff's draft SEP memo – Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

I hope this helps!

Sarah Rae

Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Bush, William
Sent: Friday, July 19, 2019 9:21 AM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: FW: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Curious what happened outside the call. See Suzanne's take on the OECA/DOJ call yesterday.

From: Armor, Suzanne
Sent: Friday, July 19, 2019 7:32 AM
To: Bush, William <Bush.William@epa.gov>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: RE: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Ex. 5 Deliberative Process (DP) OECA is still waiting on DOJ's SEP memo.

From: Bush, William
Sent: Thursday, July 18, 2019 5:37 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: FW: OCE/DOJ Monthly Call -- today 1:00 to 2:30

So any mention of Hattiesburg or Kronospan?

From: Palmer, Leif
Sent: Thursday, July 18, 2019 10:14 AM
To: Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>; Michuda, Colleen E. <Michuda.Colleen@epa.gov>; Nowell, Valerie <Nowell.Valerie@epa.gov>
Cc: R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Bush, William <Bush.William@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>
Subject: OCE/DOJ Monthly Call -- today 1:00 to 2:30

Hello – there is a monthly OCE/DOJ call today from 1:00 to 2:30 where, I hope, we will get an update on SEP issues from DOJ. I've not seen an agenda.

Ex. 6 Personal Privacy (PP) I will only be able to listen to the first hour before meeting with the RA on Paducah FF.

Can one of you sit in on the call? It is OK to take it from home or at your desk.

I'll just need someone to let me and Susan know if anything profound comes out of it – it is a pretty high level at DOJ (Bruce Gelber) who is above Henry Friedman on the DOJ org chart.

Let me know and I'll forward you the invite. If more than one of you wants to listen to the call that is OK with me.

Leif Palmer
Regional Counsel
US EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
(404) 562-9542
(770) 856-2876 (cell)

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Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 8/8/2019 1:24:10 PM
To: Gordon, Scott [Gordon.Scott@epa.gov]; Armor, Suzanne [Armor.Suzanne@epa.gov]
Subject: FW: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

Just an fyi. I was asking HQs help to find the 2005 OECA memo and it generated the below conversation.

From: Bush, William <Bush.William@epa.gov>
Sent: Wednesday, August 7, 2019 6:34 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; King, Carol <King.Carol@epa.gov>
Cc: Bush, William <Bush.William@epa.gov>
Subject: RE: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

What I am saying is that OECA's past position is that in a joint US/State settlement, the penalty in the settlement is the federal penalty - there is not a separate federal penalty and a separate state penalty. The state may get a portion of this federal penalty. And we have said that the federal penalty thus can only mitigated (lowered) by criteria in the EPA SEP Policy – meaning we have to have in the settlement the minimum penalty amount after mitigation (25% or 60% in muni settlements) and that the penalty may only be mitigated by SEPs that meet the federal SEP Policy criteria.
We have told states in the past that they cannot further mitigate (meaning lower) its portion of the federal penalty through a State SEP - otherwise, the settlement wouldn't then contain the minimum penalty amount. And we have said that none of the penalty may be mitigated by a project that is not consistent with the SEP criteria in our policy. However, to provide some flexibility to allow states to accept additional projects, including those not consistent with our SEP Policy, OECA issued that 2005 memo that allows states, if allowed under state law, to take its portion of the federal penalty in the form of a project regardless of whether such project meets our SEP Policy. The rationale for this is that total required federal penalty amount is still set forth in the settlement. See the Chattanooga CD as an example.

If we are now saying that a state can do whatever they want with its share of the federal penalty including further lowering the penalty with state projects, then rules on minimum penalty amounts go out the window and our penalty and SEP Policies would be somewhat meaningless.

Ex. 5 Attorney Client (AC)

If this still doesn't make sense, feel free to call me at 404-562-9538.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, August 7, 2019 5:48 PM
To: Bush, William <Bush.William@epa.gov>; King, Carol <King.Carol@epa.gov>
Subject: RE: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

Hi Bill and Carol,
It's true that sometimes there are projects that a State under its independent authorities can accept as part of a settlement, which would not work, for one reason or another as a federal SEP. Or, it's a project that the State is interested in accepting, but we are not as keen. States often have more latitude under state law to do various types of projects and sometimes to accept funding to do work into certain state accounts of mechanisms. Once the State has determined that everything is allowable under state law and authority, we just want to make sure that the fact that it is

a State SEP or project, under the state's authority, is made clear in the terms of the settlement documents. I wouldn't characterize these situation as penalty paid in form of a project, but rather as the state's part of the overall relief (e.g., State SEP to be delivered to State , penalty to be paid to state, etc.)
What's the context of this coming up?

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Bush, William <Bush.William@epa.gov>
Sent: Wednesday, August 07, 2019 5:11 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

From: Bush, William
Sent: Wednesday, August 7, 2019 5:11 PM
To: King, Carol <King.Carol@epa.gov>
Subject: RE: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

That's it!!

From: King, Carol <King.Carol@epa.gov>
Sent: Wednesday, August 7, 2019 5:06 PM
To: Bush, William <Bush.William@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

Maybe it's covered by the Kaplan/Pollins 2005 memo?

From: King, Carol
Sent: Wednesday, August 07, 2019 5:03 PM
To: Bush, William <Bush.William@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

https://www.epa.gov/enforcement/previous-supplemental-environmental-projects-guidance

I'm looking through EPA's previous SEP guidance (link above), but haven't seen the Walker Smith memo you're asking for yet. Caroline will know more than me about the SEP issues and what our current positions may or may not be.

My recollection is that this issue came up just recently in an Industrial Branch case that was discussed at a WED General with John Fogarty and others. I'll ask Ben if he remembers.

From: Bush, William
Sent: Wednesday, August 07, 2019 4:36 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; King, Carol <King.Carol@epa.gov>
Subject: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

Paragraph 30 of the Chattanooga CWA CD: Chattanooga shall make payment as directed by the State of fifty percent (50%) of the civil penalty due as follows: Chattanooga shall spend $238,200 on the State Project in accordance with, and as more particularly set forth in, Appendix D of this Consent Decree. TDEC has approved this payment as an appropriate State Project recognizing the value of the project and its potential to positively impact the local environment.

Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 8/7/2019 10:34:38 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]; King, Carol [King.Carol@epa.gov]
Subject: FW: Hattiesburg

From: Bush, William <Bush.William@epa.gov>
Sent: Wednesday, August 7, 2019 5:32 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>
Cc: Hansen, Susan <Hansen.Susan@epa.gov>; R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Gordon, Scott <Gordon.Scott@epa.gov>; Rae, Sarah <Rae.Sarah@epa.gov>; Bush, William <Bush.William@epa.gov>
Subject: RE: Hattiesburg

Ex. 5 AC/AWP/DP

From: Armor, Suzanne <Armor.Suzanne@epa.gov>
Sent: Monday, August 5, 2019 10:17 AM
To: Palmer, Leif <Palmer.Leif@epa.gov>
Cc: Hansen, Susan <Hansen.Susan@epa.gov>; R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>; Ghosh,

Mita <Ghosh.Mita@epa.gov>; Bush, William <Bush.William@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Gordon, Scott <Gordon.Scott@epa.gov>; Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: Hattiesburg

Ex. 5 AC/AWP/DP

From: Armor, Suzanne
Sent: Monday, August 5, 2019 9:47 AM
To: Palmer, Leif <Palmer.Leif@epa.gov>
Cc: Hansen, Susan <Hansen.Susan@epa.gov>; R4ORC.SPECIALASSISTANT <R4ORC.specialassistant@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Bush, William <Bush.William@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Gordon, Scott <Gordon.Scott@epa.gov>
Subject: RE: Hattiesburg

Good morning, Leif –

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Thanks,
Suzanne

Ex. 5 AC/AWP/DP

SUZANNE K. ARMOR | ATTORNEY-ADVISOR
United States Environmental Protection Agency
Office of Regional Counsel
Water Legal Office
61 Forsyth Street, S.W.
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From: Palmer, Leif <Palmer.Leif@epa.gov>
Sent: Sunday, August 4, 2019 7:29 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Hansen, Susan <Hansen.Susan@epa.gov>; R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>
Subject: Hattiesburg

Ex. 5 AC/AWP/DP

Leif Palmer
Regional Counsel
US EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
(404) 562-9542
(770) 856-2876 (cell)

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Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 4/3/2018 9:16:07 PM
To: Elliott, Richard [Elliott.Richard@epa.gov]; Maurice Horsey [Horsey.Maurice@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]; Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]; Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
CC: Zapata, Cesar [Zapata.Cesar@epa.gov]; Bush, William [Bush.William@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: FW: Hattiesburg - new redlined version of draft SSOs consent decree from the City of Hattiesburg
Attachments: City's SSOs CD draft 4-3-18 - REDLINE (02918790).docx; City's SSOs CD draft 4-3-18 - REDLINE (02918847).pdf

Ex. 5 AC/AWP/DP

From: John Milner [mailto:jmilner@brunini.com]
Sent: Tuesday, April 03, 2018 4:29 PM
To: Bush, William <Bush.William@epa.gov>; 'Mann, Valerie (ENRD)' <Valerie.Mann@usdoj.gov>
Subject: Hattiesburg - new redlined version of draft SSOs consent decree from the City of Hattiesburg

Bill and Valerie,

Attached is a new redlined version (Word and PDF) of the draft consent decree from the City of Hattiesburg team for your review. I did not itemize the proposed changes in this message in the interest of time. However, I do point out, as we discussed, that I hope that we can "consolidate" (and therefore reduce or eliminate) the multiplicity of references to the Priority Areas in the numerous subparagraphs of Paragraphs 20, 21 and 22. If you have any questions concerning the new redlined version, please feel free to contact me.

John

BTW, please let me know if the Word version does not include the redlining. I have had some IT difficulty having the redlining appear in a Word version even though I have "clicked" on the "Keep track changes" Metadata Removal Option prior to sending.

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201
Post Office Drawer 119, Jackson, MS 39205

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Bio / V-Card

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Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 7/19/2019 1:17:00 PM
To: Armor, Suzanne [Armor.Suzanne@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: FW: Hattiesburg SEP

Hi, Suzanne. Will give you a call in a bit.

From: Palmer, Leif
Sent: Friday, July 19, 2019 9:14 AM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>; Bush, William <Bush.William@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Gordon, Scott <Gordon.Scott@epa.gov>; Kemker, Carol <Kemker.Carol@epa.gov>; R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>
Subject: Fwd: Hattiesburg SEP

See below. Rosemarie indicated that this is more about munis and SEPs for now.

I gave her a heads-up about Kronospan and that we will discuss next week.

Suzanne A - I'll need to send her a briefing sheet on Kronospan.

Sorry

Sent from my iPhone

Begin forwarded message:

> **From:** "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>
> **Date:** July 19, 2019 at 8:52:50 AM EDT
> **To:** "Palmer, Leif" <Palmer.Leif@epa.gov>
> **Cc:** "Pollins, Mark" <Pollins.Mark@epa.gov>
> **Subject: Hattiesburg SEP**
>
> Leif-
>
> **Ex. 5 Deliberative Process (DP)**
>
> Give me a call if you'd like to discuss.
>
> Rosemarie
>
> Regards,
> Rosemarie A. Kelley, Director
> Office of Civil Enforcement
> Office of Enforcement and Compliance Assurance
> 202-564-4014

Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 8/6/2018 2:55:53 PM
To: Baschon, Carol [Baschon.Carol@epa.gov]
Subject: FW: Hattiesburg draft CD
Attachments: Hattiesburg CD 6-6-18.docx redlined from previous EPA 2-14-18 draft.docx

---

From: Bush, William
Sent: Thursday, June 14, 2018 6:18 PM
To: jmilner@brunini.com; Gene Wasson <gwasson@brunini.com>
Cc: Bush, William <Bush.William@epa.gov>
Subject: Hattiesburg draft CD

John, as we discussed, attached is red-lined draft of the CD that should address all of your last comments. We are ok with giving an additional 12 months for the Gravity System O&M Plan and limiting the advanced monitoring to the Priority Areas. Also, rather than to continue to dicker over the language that references a model, we just deleted all references to a model in the CD as you had originally requested.
So this should be it! I don't believe I will be able to get the Region, HQs or DOJ to entertain any more changes. Of course, if I missed some typos or left out "Priority Area" in a some places where you wanted me to include it, then please let me know. Otherwise, I think we have reached our bending point. Please let me know as soon as you can if this is it.
also note, and as we discussed, I was not able to touch base with MDEQ before sending this out so they may have some final thoughts but I don't think they will.

Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 1/23/2018 6:31:28 PM
To: John Milner [jmilner@brunini.com]
CC: Bill Weinischke [bill.weinischke@usdoj.gov]; Gretchen Zmitrovich [GZMITROVICH@mdeq.ms.gov]; Horsey, Maurice [Horsey.Maurice@epa.gov]; Elliott, Richard [Elliott.Richard@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]; Zapata, Cesar [Zapata.Cesar@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Bush, William [Bush.William@epa.gov]; Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
Subject: RE: Hattiesburg CD
Attachments: ENV_ENFORCEMENT-#2713000-v1-Hattiesburg__Jan_2018_draft_CD_Track_changes_version__(from_Aug_2017).doc wbb 1-22-18.doc

John,

Thanks to you, the Mayor and the rest of the City team for the call on Wednesday, December 6. And we appreciate after years of negotiating the CD that the City in your October 16, 2017 email has narrowed down its final comments on the draft CD to its proposal to delete the CAP, the Hydraulic Model Program and Paragraph 20.d. We have considered your proposal and the information discussed during the call and reviewed the information provided to us by the City depicting the direction of sewage flow from the areas of potential growth in the community (the Westside Corridor). As a result and assuming we get confirmation from the City in the very near future that our negotiations have finally come to an end, our response to your October 16, 2017 email follows:

1. We will delete the CAP from the CD.
2. As I think we all agreed during our call, the City may have to develop some form of hydraulic model to properly make rehabilitation decisions to eliminate and prevent capacity-related SSOs in the Priority Areas. However, we are also amenable to deleting the specific requirement in the CD to develop a comprehensive model program subject our review. Because we deleted the Model Program, we made corresponding changes in Paragraph 21 to substitute references to the specifically required Model to references to any model that the City may implement.
3. We are also amenable to deleting Paragraph 20.d. as you requested. We have revised Paragraph 20.c. to acknowledge that the City may use hydraulic model results based on flow monitoring data in performing its assessment and making rehab decisions for the Priority Areas. Because we are proposing to delete the CAP and the requirement to develop a Hydraulic Model Program subject to EPA review and approval, we do not think the City should object to this revision which simply reflects what the City will necessarily have to do to address its capacity-related SSOs.

These proposed changes ae reflected in the attached, revised draft of the CD. We also made some minor word changes reflecting comments we received from our upper management.
Finally, EPA HQs asked that we add a sentence to the SEP appendix clarifying that the escrow account is being set up "to ensure resources are available to fund the SEP for financial assurance purposes." I trust that this will not cause you any heartburn.

We look forward to hearing back from you as soon as possible so that we can finally conclude these negotiations. We recognize of course that final approval of the CD by the City's will require consultation/approval from from the City Council. Similarly, final approval of the draft CD on part is caveated upon obtaining sign off from upper management within EPA, MDEQ and DOJ.

Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 3/22/2018 2:53:31 PM
To: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
Subject: FW: Hattiesburg CD
Attachments: Hattiesburg CD 2-14-18.docx redlined from previous EPA 1-23-18 draft.docx; Hattiesburg CD 2-14-18.docx redlined from previous City 2-13-18 draft.docx

---

From: Bush, William
Sent: Tuesday, February 20, 2018 11:09 AM
To: jmilner@brunini.com
Cc: Bush, William <Bush.William@epa.gov>
Subject: FW: Hattiesburg CD

So attached are 2 versions of a redlined CD.
The first version incorporates a lot the City's proposals in its 2-13-18 draft and is redlined against EPA's last draft from 1-23-18.
The second version incorporates the same things but is redlined against the City's 2-12-18 draft.
Take a look at both of them and let's discuss.

Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 6/13/2019 9:30:04 PM
To: Rae, Sarah [Rae.Sarah@epa.gov]
CC: Armor, Suzanne [Armor.Suzanne@epa.gov]
Subject: RE: Hattiesburg SEP

Thanks!
Suzanne, give me a call when you get a chance. 9538. Thanks.

From: Rae, Sarah
Sent: Thursday, June 13, 2019 5:27 PM
To: Bush, William <Bush.William@epa.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: Hattiesburg SEP

Suzanne and Bill,

We just spoke with Susan and she plans to put this on Monday agenda for her meeting with Jeff Clark to discuss. Both Loren and I emphasized the need to have an answer/path forward. I will let you know as soon as I hear more.

Have a good weekend!

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Bush, William
Sent: Tuesday, June 11, 2019 12:59 PM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: Re: Hattiesburg SEP

Thanks!!

Sent from my iPhone

On Jun 11, 2019, at 12:03 PM, Rae, Sarah <Rae.Sarah@epa.gov> wrote:

> Bill,
>
> I just spoke with Rosemarie and she was not sure if Susan's email went out yet. We have put this on the agenda for the weekly with Susan for Thursday afternoon, I hope to have an answer after that meeting!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Bush, William
Sent: Tuesday, June 11, 2019 11:53 AM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: Re: Hattiesburg SEP

Ex. 5 Attorney Client (AC)

Sent from my iPhone

On Jun 11, 2019, at 11:46 AM, Bush, William <Bush.William@epa.gov> wrote:

> Hi, Sarah. Ex. 5 Attorney Client (AC)
>
> Sent from my iPhone
>
> On Jun 3, 2019, at 4:30 PM, Gonzalez, Sarah <Gonzalez.Sarah@epa.gov> wrote:
>
>> Suzanne and Bill,
>>
>> First, welcome back to enforcement Bill! Ex. 5 Attorney Client (AC)
>>
>> Ex. 5 Attorney Client (AC)
>>
>> I hope this helps clarify. Give me a call if you have any further questions!
>>
>> **Sarah Gonzalez**
>> Attorney-Adviser
>> United States Environmental Protection Agency
>> OECA - OCE - Water Enforcement Division
>> WJC South 3110B (Mail Code 2243-A)
>> 1200 Pennsylvania Avenue NW
>> Washington, DC 20004
>> (202) 564-2841 (FAX 202-564-0018)
>> gonzalez.sarah@epa.gov

It is important to think beyond yourself.

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Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 8/5/2019 3:19:21 PM
To: Bragan, Mary Jo [Bragan.Maryjo@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]; Elliott, Richard [Elliott.Richard@epa.gov]
Subject: Fwd: Hattiesburg

Sent from my iPhone

Begin forwarded message:

From: "Armor, Suzanne" <Armor.Suzanne@epa.gov>
Date: August 5, 2019 at 9:47:10 AM EDT
To: "Palmer, Leif" <Palmer.Leif@epa.gov>
Cc: "Hansen, Susan" <Hansen.Susan@epa.gov>, R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>, "Ghosh, Mita" <Ghosh.Mita@epa.gov>, "Bush, William" <Bush.William@epa.gov>, "Rubini, Suzanne" <Rubini.Suzanne@epa.gov>, "Gordon, Scott" <Gordon.Scott@epa.gov>
Subject: RE: Hattiesburg

Good morning, Leif –

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Thanks,
Suzanne

Ex. 5 AC/AWP/DP

SUZANNE K. ARMOR | ATTORNEY-ADVISOR
United States Environmental Protection Agency
Office of Regional Counsel
Water Legal Office
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
tel: 404.562.9701
fax: 404.562.8078
armor.suzanne@epa.gov

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From: Palmer, Leif <Palmer.Leif@epa.gov>
Sent: Sunday, August 4, 2019 7:29 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Hansen, Susan <Hansen.Susan@epa.gov>; R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>
Subject: Hattiesburg

Ex. 5 AC/AWP/DP

Leif Palmer
Regional Counsel
US EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
(404) 562-9542
(770) 856-2876 (cell)

This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 2/27/2018 8:20:52 PM
To: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
Subject: FW: Hattiesburg draft SSO CD
Attachments: City's redlined draft Consent Decree - PDF (02875650).pdf; City's clean draft Consent Decree (02875646).doc

---

From: John Milner [mailto:jmilner@brunini.com]
Sent: Tuesday, February 13, 2018 5:09 PM
To: Bush, William <Bush.William@epa.gov>
Cc: Bill Weinischke <bill.weinischke@usdoj.gov>; Gretchen Zmitrovich <GZMITROVICH@mdeq.ms.gov>; Horsey, Maurice <Horsey.Maurice@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Gene Wasson <gwasson@brunini.com>
Subject: Hattiesburg draft SSO CD

Bill,

On behalf of the City of Hattiesburg and Mayor Barker, the City appreciates the deletion of the three primary capacity-related provisions in your revised consent decree draft that were requested by the City in my October 16 e-mail:

1. CD Draft Paragraph 23.i. Capacity Assurance Plan

2. CD Draft Paragraph 23.d. Sewer System Hydraulic Model

3. CD Draft Paragraph 20.d. Capacity Assessment

The City cannot accept the insertion of the almost identical language in Paragraph 20.c. (Flow Monitoring) that was deleted in former Paragraph 20.d. (Capacity Assessment). As we have discussed in our December 6 conference call, subsequent clarifying mapping and other documentation sent to you after this call and the January 22 conference call, there is no need to have capacity-related provisions (including Paragraphs 20.d., 23.d. and23.i.) in the CD.

In an effort to move forward with negotiations expeditiously in order to seek a mutually acceptable resolution of the consent decree, I have attached a new proposed redlined consent decree draft. This redlined version accepted all changes from EPA's January version of the CD and then redlined the City's new changes as shown in the attached PDF. All of our redlined changes were accepted in order to create the attached clean Word version.

Please note that, in addition to deleting the language that you proposed to add in Paragraph 20.c., I have "implemented" my comment in my October 16 e-mail: "Please note that I have identified several other wording changes that need to be made in order to produce a new redlined version of the CD Draft. I have not produced a new redlined version and will be glad to do so." These wording changes are for the purpose of making the CD consistent with the deletion of Paragraphs 20.d., 23.d. and 23.i. from the draft CD. I am not detailing these changes in this message but refer you to the attached redlined version. I will highlight below one of these wording consistency changes that was added to Paragraph 23 in order to make sure that the intent and effect of all of the proposed changes are clear and comprehensive:

Notwithstanding anything in this Consent Decree to the contrary, including but not limited to Paragraphs 20, 21 and 23 and Appendix D, the City shall have no obligations in the Consent Decree relating to capacity assessment, capacity assurance or hydraulic modeling.

Please contact me if you have any questions about the attached proposed CD draft redlined revisions. I hope that we can quickly move forward with efforts to finalize the draft CD. I have cc'ed everyone who was cc'ed on your February 5 e-mail.

John

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201
Post Office Drawer 119, Jackson, MS 39205

www.brunini.com
Bio / V-Card

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Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 2/21/2018 8:17:11 PM
To: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
Subject: FW: Hattiesburg CD
Attachments: Hattiesburg CD 2-14-18.docx redlined from previous EPA 1-23-18 draft.docx; Hattiesburg CD 2-14-18.docx redlined from previous City 2-13-18 draft.docx

---

From: Bush, William
Sent: Tuesday, February 20, 2018 11:09 AM
To: jmilner@brunini.com
Cc: Bush, William <Bush.William@epa.gov>
Subject: FW: Hattiesburg CD

So attached are 2 versions of a redlined CD.
The first version incorporates a lot the City's proposals in its 2-13-18 draft and is redlined against EPA's last draft from 1-23-18.
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Take a look at both of them and let's discuss.

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From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 2/20/2018 4:09:38 PM
To: Bill Weinischke [bill.weinischke@usdoj.gov]
Subject: FW: Hattiesburg CD
Attachments: Hattiesburg CD 2-14-18.docx redlined from previous EPA 1-23-18 draft.docx; Hattiesburg CD 2-14-18.docx redlined from previous City 2-13-18 draft.docx

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Cc: Bush, William <Bush.William@epa.gov>
Subject: FW: Hattiesburg CD

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From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 7/23/2019 5:06:35 PM
To: Armor, Suzanne [Armor.Suzanne@epa.gov]
Subject: RE: Hattiesburg

Hey. Mita will fill you in. Thanks!!

From: Armor, Suzanne
Sent: Tuesday, July 23, 2019 10:46 AM
To: Bush, William <Bush.William@epa.gov>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: FW: Hattiesburg

Ex. 5 Attorney Client (AC)

-Suzanne

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Monday, July 22, 2019 3:39 PM
To: Rae, Sarah <Rae.Sarah@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: Hattiesburg

Ex. 5 Attorney Client (AC)

From: Rae, Sarah <Rae.Sarah@epa.gov>
Sent: Monday, July 22, 2019 12:17 PM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: Hattiesburg

I am available today. My only conflict today is from 2-4pm ET.

Ex. 5 Attorney Client (AC)

Sarah Rae

Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Monday, July 22, 2019 12:04 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: Hattiesburg

I am available this aft Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

From: Armor, Suzanne <Armor.Suzanne@epa.gov>
Sent: Monday, July 22, 2019 11:58 AM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>; Rae, Sarah <Rae.Sarah@epa.gov>
Subject: Hattiesburg

Hi, Valerie & Sarah –

Do you all have some time this afternoon Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

I'm free all afternoon. Let me know what works for you.

Thanks,
Suzanne

SUZANNE K. ARMOR | ATTORNEY-ADVISOR
United States Environmental Protection Agency
Office of Regional Counsel
Office of Water Legal Support
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
tel: 404.562.9701
fax: 404.562.8078
armor.suzanne@epa.gov

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From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 2/14/2018 3:40:38 PM
To: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]; Bush, William [Bush.William@epa.gov]
Subject: FW: Hattiesburg draft SSO CD
Attachments: City's redlined draft Consent Decree - PDF (02875650).pdf; City's clean draft Consent Decree (02875646).doc

From: Bush, William
Sent: Tuesday, February 13, 2018 6:58 PM
To: Elliott, Richard <Elliott.Richard@epa.gov>; Maurice Horsey <Horsey.Maurice@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Cc: Bill Weinischke <bill.weinischke@usdoj.gov>; Bush, William <Bush.William@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>
Subject: FW: Hattiesburg draft SSO CD

Ex. 5 AC/AWP/DP

From: John Milner [mailto:jmilner@brunini.com]
Sent: Tuesday, February 13, 2018 5:09 PM
To: Bush, William <Bush.William@epa.gov>
Cc: Bill Weinischke <bill.weinischke@usdoj.gov>; Gretchen Zmitrovich <GZMITROVICH@mdeq.ms.gov>; Horsey, Maurice <Horsey.Maurice@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Gene Wasson <gwasson@brunini.com>
Subject: Hattiesburg draft SSO CD

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Please contact me if you have any questions about the attached proposed CD draft redlined revisions. I hope that we can quickly move forward with efforts to finalize the draft CD. I have cc'ed everyone who was cc'ed on your February 5 e-mail.

John

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201
Post Office Drawer 119, Jackson, MS 39205

www.brunini.com
Bio / V-Card

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Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 7/9/2019 6:17:34 PM
To: Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Gordon, Scott [Gordon.Scott@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Bragan, Mary Jo [Bragan.Maryjo@epa.gov]; Elliott, Richard [Elliott.Richard@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]; Ammons, Brad [Ammons.Brad@epa.gov]
Subject: FW: Hattiesburg, MS

fyi

From: Rae, Sarah
Sent: Tuesday, July 9, 2019 12:00 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>; Bush, William <Bush.William@epa.gov>
Subject: Hattiesburg, MS

Suzanne and Valerie,

I talked with my management today and they reported that Ex. 5 Attorney Client (AC) Ex. 5 Attorney Client (AC) Jeff was not on the call, but Bruce G advised Susan that Jeff's memo on SEPs would be finalized next week. Ex. 5 Attorney Client (AC) Ex. 5 Attorney Client (AC) Until them...we continue to wait. I will let you know as soon as I hear more from my management.

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

It is important to think beyond yourself.

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Please consider the environment before printing this email

Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 5/8/2017 6:29:07 PM
To: Fentress, Robert [Fentress.Robert@epa.gov]
CC: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
Subject: RE: Revised draft response to Valerie for your review

Ex. 5 Attorney Client (AC)

From: Fentress, Robert
Sent: Monday, May 08, 2017 1:51 PM
To: Bush, William <Bush.William@epa.gov>
Cc: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Subject: RE: Revised draft response to Valerie for your review

Ex. 5 Attorney Client (AC)

Robert D. Fentress
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-7023
fentress.robert@epa.gov

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From: Bush, William
Sent: Monday, May 08, 2017 12:03 PM
To: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Cc: Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Fentress, Robert <Fentress.Robert@epa.gov>; Bush, William <Bush.William@epa.gov>
Subject: RE: Revised draft response to Valerie for your review

Thanks, Valerie.

Ex. 5 Attorney Client (AC)

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We are trying to set up a quick call with them for today or on Wednesday between 10:30 and 3:30. We'll let you know what time and hopefully one of you is available then.

From: Mann, Valerie (ENRD) [mailto:Valerie.Mann@usdoj.gov]
Sent: Monday, May 08, 2017 9:52 AM
To: Bush, William <Bush.William@epa.gov>
Subject: FW: Revised draft response to Valerie for your review

Bill,

Ex. 5 Attorney Client (AC)

From: John Milner [mailto:jmilner@brunini.com]
Sent: Wednesday, May 03, 2017 6:56 PM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>
Cc: Bush.William@epa.gov
Subject: FW: Revised draft response to Valerie for your review

Valerie,

Please see the supplemented versions of my responses to your action items 10. and 12, with available applicable attachments, as well as supplemental comments and questions concerning the Capacity Assurance Program (CAP) provisions of the draft consent decree (CD) and a request for a conference call concerning all of these issues:

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As part of the discussion for drafting this language, the City needs guidance from the EPA. In an effort to be effective with regard to compliance and cost, the City has tried to look at methodology of implementation. One matter that has been discussed relates to the monitoring of "successive SSOs" (which could also be referred to as "dependents SSOs"). Could these SSOs be monitored at a common flow point such as a common lift station? Also, the original language in the CD called for flow monitoring each SSO location. Can other equipment be considered such as high water sensors and head sensors? These devices are more easily implemented and are more cost effective than a flow monitoring system. The goal is to assess the potential cost to the City of implementing a program that would be acceptable under the CD.

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Valerie and Bill, the City believes that it would be advantageous to schedule a conference call among the City, EPA and DOJ next week to discuss these issues so that applicable CD language can be proposed by the City to address them. The technical and operational details relating to these issues are easier to explain, discuss and obtain answers in a conference call setting. I look forward to your response regarding the conference call request. Thanks

John

From: Shea McNease [mailto:Shea@sd-w.com]
Sent: Wednesday, May 03, 2017 5:16 PM
To: John Milner
Subject: RE: Revised draft response to Valerie for your review

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I hope that you find this helpful. Let me know if there are any other questions.

Thanks,

Shea E. McNease, P.E.
Project Engineer
shea@sd-w.com

sdw Engineering Progress

301 2nd Ave. | Hattiesburg, MS 39401 | (p) 601.544.1821 | (f) 601.544.0501 | sd-w.com

---

From: John Milner [mailto:jmilner@brunini.com]
Sent: Tuesday, May 02, 2017 4:36 PM
To: Shea McNease <Shea@sd-w.com>
Cc: John Milner <jmilner@brunini.com>
Subject: Revised draft response to Valerie for your review

Valerie,

Please see the following responses to your prior action item requests and the attached deliverables that are currently available:

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   The City will provide a letter by May 17 which requests the a payment plan in four equal installments in the following four months over two fiscal years:

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2. The City will consider voluntarily submitting the SORP and ERP earlier than the current deadline set forth in the CD.

   The City is in the process of preparing the SORP and ERP and is definitely considering the voluntary submission of the SORP and ERP earlier than the CD deadline.

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   See the attached revised Appendices A, B and C.

4. The City will revise maps C -1 to label a portion of sewer shed 36 and will revise C-2 to label a portion of sewer shed 44.

   See attached revised maps.

5. The City will correct the typo in paragraph 11 of Appendix A.

   See attached revised Appendix A.

6. The City will remove the dates under the title pages of Appendices A, B and C.

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    The City team is meeting tomorrow and next week to address this issue and will submit proposed language for this provision by May 17.

13. The City will provide to DOJ the information for whom penalty payment instructions should be sent as set forth in Paragraph 26 of the CD.

    The City will provide these instructions by May 17.

Valerie, in addition to these action items, as I have mentioned to you and Bill earlier, the City is reviewing the Capacity Assurance Program provision of the CD, Paragraph 23.i (pp. 35 – 40) and will provide comments on issues related to this provision by May 17 after meetings tomorrow and next week.

If you have any questions concerning this message or the attachments, please feel free to contact me.

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

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The Pinnacle Building
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From: John Milner
Sent: Tuesday, May 02, 2017 3:34 PM
To: 'Shea McNease'
Cc: John Milner
Subject: Draft response to Valerie for discussion

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John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 5/8/2017 3:45:40 PM
To: Elliott, Richard [Elliott.Richard@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]; Fentress, Robert [Fentress.Robert@epa.gov]
Subject: FW: Revised draft response to Valerie for your review
Attachments: SSO_EPA_Format.xlsx; SSO_Calls_EPA.cpg; SSO_Calls_EPA.dbf; SSO_Calls_EPA.prj; SSO_Calls_EPA.shp; SSO_Calls_EPA.shp.xml; SSO_Calls_EPA.shx

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Engineering Progress

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13. The City will provide to DOJ the information for whom penalty payment instructions should be sent as set forth in Paragraph 26 of the CD.

    We will provide these instructions by May 10.

Valerie, in addition to these issues, as I have mentioned, the City is reviewing the Capacity Assurance Program provision of the CD, Paragraph 23.i (pp. 35 – 40) and will provide comments on issues related to this provision by May 17.

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

Appointment

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 2/1/2017 11:04:25 PM
To: jmilner@brunini.com; Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]; Fentress, Robert [Fentress.Robert@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]; Elliott, Richard [Elliott.Richard@epa.gov]; Gretchen Zmitrovich [GZMITROVICH@mdeq.ms.gov]; Horsey, Maurice [Horsey.Maurice@epa.gov]

Subject: Date for Hattiesburg meeting in Atlanta
Location: Atlanta Federal Center - Room 13D

Start: 2/7/2017 2:00:00 PM
End: 2/7/2017 8:30:00 PM
Show Time As: Tentative

Ex. 6 Personal Privacy (PP)

Agenda for 2/2/17 Meeting in Atlanta:

- Discuss City's SSO report findings
- Discuss City's efforts to expedite preparation of its SORP and ERP
- Finalize Appendices A, B and C
- Discuss City's comments on 1/5/17 draft CD including SSO monitoring requirements, stips for unreported SSOs and minor boilerplate changes
- Discuss civil penalty proposal and City's draft SEP proposal
- EJ/Community Outreach Status
- Next Steps/Action Items?

Message

From: Bush, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5F0FE888BB4366B1EDBF97C804B882-BUSH, WILLIAM]
Sent: 2/1/2017 10:41:05 PM
To: jmilner@brunini.com
Subject: FW: Action Items/Agenda - Hattiesburg

From: Bush, William
Sent: Friday, January 13, 2017 5:16 PM
To: jmilner@brunini.com; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>; Fentress, Robert <Fentress.Robert@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Gretchen Zmitrovich <GZMITROVICH@mdeq.ms.gov>
Cc: Bush, William <Bush.William@epa.gov>; Horsey, Maurice <Horsey.Maurice@epa.gov>
Subject: Action Items/Agenda - Hattiesburg

Y'all let me know if anyone has comments/questions/additions regarding our action items and/or the agenda for the 2/7 meeting.

Prior to 2/7/17 Meeting in Atlanta:

- City shall complete its review of its SSO reporting practices as discussed on 1/12/17 call (will include additional search terms and interview City telephone operators who create initial tickets) and then submit before 1/20/17 a written report/analysis of SSO results and problems identified that need to be corrected to ensure permit and Consent Decree reporting requirements will be achieved {note that how the problems will be corrected and other processes to ensure compliance will be laid on in the SORP/ERP)
- EPA will attempt to finalize its civil penalty proposal if necessary SSO data is resolved, consult with MDEQ and share this proposal with the City by 1/27/17

Agenda for 2/2/17 Meeting in Atlanta:

- Discuss City's SSO reporting findings
- Discuss City's efforts to expedite preparation of its SORP and ERP
- Finalize Appendices A, B and C
- Discuss City's comments on 1/5/17 draft CD including SSO monitoring requirements, stips for unreported SSOs and minor boilerplate changes
- Discuss civil penalty proposal and City's draft SEP proposal

Message

From: Elliott, Richard [Elliott.Richard@epa.gov]
Sent: 7/19/2019 8:56:56 PM
To: Armor, Suzanne [Armor.Suzanne@epa.gov]; Bragan, Mary Jo [Bragan.Maryjo@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Castillo, Jairo [Castillo.Jairo@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]
Subject: RE: Hattiesburg

Suzanne,

Ex. 5 AC/AWP/DP

Richard Elliott, P.E., PMP
Environmental Engineer

From: Armor, Suzanne
Sent: Friday, July 19, 2019 4:50 PM
To: Bragan, Mary Jo <Bragan.Maryjo@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Castillo, Jairo <Castillo.Jairo@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Subject: RE: Hattiesburg

Ex. 5 AC/AWP/DP

From: Bragan, Mary Jo
Sent: Friday, July 19, 2019 3:03 PM
To: Ghosh, Mita <Ghosh.Mita@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>; Bragan, Mary Jo <Bragan.Maryjo@epa.gov>; Castillo, Jairo <Castillo.Jairo@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Cc: Bragan, Mary Jo <Bragan.Maryjo@epa.gov>
Subject: Hattiesburg

Ex. 5 AC/AWP/DP

Message

From: Elliott, Richard [Elliott.Richard@epa.gov]
Sent: 8/16/2019 4:00:02 PM
To: Castillo, Jairo [Castillo.Jairo@epa.gov]
Subject: RE: Case update
Attachments: RA Brief Municipal Cases 2019-08-16.docx; Starke WWTF_CEI Report-06-04-2019.docx

Jairo,

A few things to discuss:

Ex. 5 AC/AWP/DP

That was a mouthful. If you have question please feel free to call me.

Thanks

Richard Elliott, P.E., PMP
Environmental Engineer

From: Castillo, Jairo <Castillo.Jairo@epa.gov>
Sent: Friday, August 16, 2019 11:28 AM
To: Elliott, Richard <Elliott.Richard@epa.gov>
Subject: Case update

Hi Richard,

Send me an update of the following two cases, the information is needed to update an OECA tracker spreadsheet:

- Hattiesburg, MS [sso] – Richard/Suzanne
- WWTA/Hamilton Co., TN [sso] – Richard/Paul/Nate

If you updated the Muni huddle papers recently, send me the file.

Thanks,

Jairo Castillo-Valenzuela, P.E., Chief
Drinking Water/Wastewater Enforcement Section
Water Enforcement Branch
Enforcement & Compliance Assurance Division
USEPA Region 4
61 Forsyth St SW #9
Atlanta, GA 30303
404-562-9257

Message

From: Castillo, Jairo [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7B3F584C028B4CA3BC7C72DFAD965BC0-CASTILLO, JAIRO]
Sent: 10/16/2019 10:17:07 PM
To: Rae, Sarah [Rae.Sarah@epa.gov]
Subject: Re: Hattiesburg

Thanks!

Sent from my iPhone

On Oct 16, 2019, at 3:54 PM, Rae, Sarah <Rae.Sarah@epa.gov> wrote:

Ex. 5 Attorney Client (AC)

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Denton, Loren <Denton.Loren@epa.gov>
Sent: Wednesday, October 16, 2019 3:52 PM
To: Castillo, Jairo <Castillo.Jairo@epa.gov>
Cc: Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: Hattiesburg

Jairo,

Ex. 5 Attorney Client (AC)

Loren Denton, Chief
Municipal Branch.
Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. EPA (2243A)
Washington, D.C. 20460
Phone: (202) 564-1148

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From: Bahk, Benjamin <Bahk.Benjamin@epa.gov>
Sent: Wednesday, October 16, 2019 3:36 PM
To: Denton, Loren <Denton.Loren@epa.gov>
Cc: Castillo, Jairo <Castillo.Jairo@epa.gov>
Subject: Hattiesburg

Loren,

Ex. 5 Attorney Client (AC)

Thx.

Ben Bahk
Branch Chief, Industrial Branch
U.S. Environmental Protection Agency
Office of Civil Enforcement
1200 Pennsylvania Ave. NW Mail Code 2243A
Washington, DC 20460
202-564-4293

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http://www.epa.gov/compliance/complaints/index.html

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Message

From: Castillo, Jairo [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7B3F584C028B4CA3BC7C72DFAD965BC0-CASTILLO, JAIRO]
Sent: 10/16/2019 10:16:35 PM
To: Denton, Loren [Denton.Loren@epa.gov]
Subject: Re: Hattiesburg

Thanks Loren, for the update.

And Ben, thanks for following up with my inquiry.

All the Best,

Sent from my iPhone

On Oct 16, 2019, at 3:51 PM, Denton, Loren <Denton.Loren@epa.gov> wrote:

Jairo,

Ex. 5 Attorney Client (AC)

Loren Denton, Chief
Municipal Branch.
Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. EPA (2243A)
Washington, D.C. 20460
Phone: (202) 564-1148

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From: Bahk, Benjamin <Bahk.Benjamin@epa.gov>
Sent: Wednesday, October 16, 2019 3:36 PM
To: Denton, Loren <Denton.Loren@epa.gov>
Cc: Castillo, Jairo <Castillo.Jairo@epa.gov>
Subject: Hattiesburg

Loren,

Ex. 5 Attorney Client (AC)

Thx.

Ben Bahk
Branch Chief, Industrial Branch
U.S. Environmental Protection Agency
Office of Civil Enforcement

1200 Pennsylvania Ave. NW Mail Code 2243A
Washington, DC 20460
202-564-4293

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http://www.epa.gov/compliance/complaints/index.html

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Message

From: Castillo, Jairo [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7B3F584C028B4CA3BC7C72DFAD965BC0-CASTILLO, JAIRO]
Sent: 8/16/2019 7:08:53 PM
To: Elliott, Richard [Elliott.Richard@epa.gov]
Subject: RE: Case update

Ex. 6 Personal Privacy (PP)

Have a great weekend and safe travels.

Jairo Castillo-Valenzuela, P.E., Chief
Drinking Water/Wastewater Enforcement Section
Water Enforcement Branch
Enforcement & Compliance Assurance Division
USEPA Region 4
61 Forsyth St SW #9
Atlanta, GA 30303
404-562-9257

From: Elliott, Richard <Elliott.Richard@epa.gov>
Sent: Friday, August 16, 2019 12:00 PM
To: Castillo, Jairo <Castillo.Jairo@epa.gov>
Subject: RE: Case update

Jairo,

A few things to discuss:

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 6 Personal Privacy (PP)

Thanks

Richard Elliott, P.E., PMP
Environmental Engineer

From: Castillo, Jairo <Castillo.Jairo@epa.gov>
Sent: Friday, August 16, 2019 11:28 AM
To: Elliott, Richard <Elliott.Richard@epa.gov>
Subject: Case update

Hi Richard,

Send me an update of the following two cases, the information is needed to update an OECA tracker spreadsheet:

- Hattiesburg, MS [sso] – Richard/Suzanne
- WWTA/Hamilton Co., TN [sso] – Richard/Paul/Nate

If you updated the Muni huddle papers recently, send me the file.

Thanks,

Jairo Castillo-Valenzuela, P.E., Chief
Drinking Water/Wastewater Enforcement Section
Water Enforcement Branch
Enforcement & Compliance Assurance Division
USEPA Region 4
61 Forsyth St SW #9
Atlanta, GA 30303
404-562-9257

Message

From: Sayre, Dennis [Sayre.Dennis@epa.gov]
Sent: 6/17/2019 6:36:10 PM
To: Armor, Suzanne [Armor.Suzanne@epa.gov]; Janovitz, Sara [Janovitz.Sara@epa.gov]; Elliott, Richard [Elliott.Richard@epa.gov]
Subject: RE: City of Meridian

It's what we do….

Dennis J. Sayre
Drinking Water & Wastewater Enforcement Section
(404) 562-9756

From: Armor, Suzanne
Sent: Monday, June 17, 2019 2:30 PM
To: Sayre, Dennis <Sayre.Dennis@epa.gov>; Janovitz, Sara <Janovitz.Sara@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Subject: RE: City of Meridian

Ex. 5 AC/AWP/DP

From: Sayre, Dennis
Sent: Monday, June 17, 2019 1:41 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Janovitz, Sara <Janovitz.Sara@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Subject: RE: City of Meridian

Well isn't that special…!

Ex. 5 AC/AWP/DP

Dennis J. Sayre
Drinking Water & Wastewater Enforcement Section
(404) 562-9756

From: Armor, Suzanne
Sent: Monday, June 17, 2019 10:59 AM
To: Ghosh, Mita <Ghosh.Mita@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>
Cc: Janovitz, Sara <Janovitz.Sara@epa.gov>; Rae, Sarah <Rae.Sarah@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Bragan, Mary Jo <Bragan.Maryjo@epa.gov>; R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>; Chavez, Araceli <Chavez.Araceli@epa.gov>; Bush, William <Bush.William@epa.gov>; Gordon, Scott <Gordon.Scott@epa.gov>
Subject: FW: City of Meridian

Ex. 5 AC/AWP/DP

From: Weinischke, Bill (ENRD) <Bill.Weinischke@usdoj.gov>
Sent: Thursday, June 13, 2019 3:35 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: FW: City of Meridian

Ex. 5 AC/AWP/DP

From: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>
Sent: Thursday, June 13, 2019 3:20 PM
To: Weinischke, Bill (ENRD) <BWeinischk@ENRD.USDOJ.GOV>
Subject: RE: City of Meridian

Ex. 5 AC/AWP/DP

From: Weinischke, Bill (ENRD) <BWeinischk@ENRD.USDOJ.GOV>
Sent: Thursday, June 13, 2019 2:41 PM
To: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>
Subject: RE: City of Meridian

Ex. 5 AC/AWP/DP

From: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>
Sent: Thursday, June 13, 2019 2:38 PM
To: Weinischke, Bill (ENRD) <BWeinischk@ENRD.USDOJ.GOV>
Subject: Re: City of Meridian

Ex. 5 AC/AWP/DP

Sent from my iPhone

On Jun 13, 2019, at 2:34 PM, Weinischke, Bill (ENRD) <BWeinischk@ENRD.USDOJ.GOV> wrote:

Ex. 5 AC/AWP/DP

From: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>
Sent: Thursday, June 13, 2019 2:32 PM
To: Weinischke, Bill (ENRD) <BWeinischk@ENRD.USDOJ.GOV>
Subject: Re: City of Meridian

Ex. 5 AC/AWP/DP

Sent from my iPhone

On Jun 13, 2019, at 12:22 PM, Weinischke, Bill (ENRD) <BWeinischk@ENRD.USDOJ.GOV> wrote:

Ex. 5 AC/AWP/DP

Message

From: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
Sent: 2/12/2018 5:31:33 PM
To: Bush, William [Bush.William@epa.gov]; Elliott, Richard [Elliott.Richard@epa.gov]; Horsey, Maurice [Horsey.Maurice@epa.gov]; Bill Weinischke [bill.weinischke@usdoj.gov]
Subject: RE: Hattiesburg CD

Thanks for the update Bill!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Bush, William
Sent: Monday, February 12, 2018 12:29 PM
To: Elliott, Richard <Elliott.Richard@epa.gov>; Horsey, Maurice <Horsey.Maurice@epa.gov>; Bill Weinischke <bill.weinischke@usdoj.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: FW: Hattiesburg CD

fyi

From: John Milner [mailto:jmilner@brunini.com]
Sent: Thursday, February 08, 2018 4:53 PM
To: Bush, William <Bush.William@epa.gov>
Subject: RE: Hattiesburg CD

My apologies for the delay in responding, Bill. I will have a meeting with the Mayor and the City's team tomorrow (Friday, Feb. 9). I'll be back in touch soon after that meeting.

John

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201
Post Office Drawer 119, Jackson, MS 39205

www.brunini.com
Bio / V-Card

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From: Bush, William [mailto:Bush.William@epa.gov]
Sent: Monday, February 05, 2018 9:23 AM
To: John Milner
Cc: Bill Weinischke; Gretchen Zmitrovich; Horsey, Maurice; Elliott, Richard; Sayre, Dennis; Zapata, Cesar; Ghosh, Mita; Gonzalez, Sarah; Bush, William
Subject: RE: Hattiesburg CD

Hi, John. Just wanted to touch base with you on this and ask when we may hear back from you.

From: Bush, William
Sent: Tuesday, January 23, 2018 1:31 PM
To: jmilner@brunini.com
Cc: Bill Weinischke <bill.weinischke@usdoj.gov>; Gretchen Zmitrovich <GZMITROVICH@mdeq.ms.gov>; Horsey, Maurice <Horsey.Maurice@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Bush, William <Bush.William@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Hattiesburg CD

John,

Thanks to you, the Mayor and the rest of the City team for the call on Wednesday, December 6. And we appreciate after years of negotiating the CD that the City in your October 16, 2017 email has narrowed down its final comments on the draft CD to its proposal to delete the CAP, the Hydraulic Model Program and Paragraph 20.d. We have considered your proposal and the information discussed during the call and reviewed the information provided to us by the City depicting the direction of sewage flow from the areas of potential growth in the community (the Westside Corridor). As a result and assuming we get confirmation from the City in the very near future that our negotiations have finally come to an end, our response to your October 16, 2017 email follows:

1. We will delete the CAP from the CD.
2. As I think we all agreed during our call, the City may have to develop some form of hydraulic model to properly make rehabilitation decisions to eliminate and prevent capacity-related SSOs in the Priority Areas. However, we are also amenable to deleting the specific requirement in the CD to develop a comprehensive model program subject our review. Because we deleted the Model Program, we made corresponding changes in Paragraph 21 to substitute references to the specifically required Model to references to any model that the City may implement.
3. We are also amenable to deleting Paragraph 20.d. as you requested. We have revised Paragraph 20.c. to acknowledge that the City may use hydraulic model results based on flow monitoring data in performing its assessment and making rehab decisions for the Priority Areas. Because we are proposing to delete the CAP and the requirement to develop a Hydraulic Model Program subject to EPA review and approval, we do not think the City should object to this revision which simply reflects what the City will necessarily have to do to address its capacity-related SSOs.

These proposed changes ae reflected in the attached, revised draft of the CD. We also made some minor word changes reflecting comments we received from our upper management.

Finally, EPA HQs asked that we add a sentence to the SEP appendix clarifying that the escrow account is being set up "to ensure resources are available to fund the SEP for financial assurance purposes." I trust that this will not cause you any heartburn.

We look forward to hearing back from you as soon as possible so that we can finally conclude these negotiations. We recognize of course that final approval of the CD by the City's will require consultation/approval from from the City Council. Similarly, final approval of the draft CD on part is caveated upon obtaining sign off from upper management within EPA, MDEQ and DOJ.

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 3/19/2019 8:56:48 PM
To: jmilner@brunini.com; Gene Wasson [gwasson@brunini.com]
CC: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]; Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]; Gretchen Zmitrovich [GZMITROVICH@mdeq.ms.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]; Elliott, Richard [Elliott.Richard@epa.gov]
Subject: City of Hattiesburg Consent Decree
Attachments: Hattiesburg CD 03192019.pdf; ATT96886

Dear John and Gene:

Attached for the City's approval is a PDF of the proposed final version of the Consent Decree between the United States, Mississippi, and the City of Hattiesburg. This version reflects the proposed edits that I sent to you via email on February 5, 2019 and which we discussed during our call on February 6, 2019. In addition, this version includes several further edits, based on EPA's, DOJ's, and MDEQ's final review:

- In Paragraphs J, 19, 20, 23.g.1, 23.i, 23.i.4.a, and 23.i.4.b, we are proposing to revert from the use of the term "remediate" to "address" to be consistent with standard CD language;
- In Paragraph M, we are proposing to adding "in this Section of" to the statement, "WHEREAS, the City does not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint or in this Section of the Consent Decree," since the Introduction section of the Consent Decree reiterates some of the allegations from the Complaint;
- In Paragraph 23, we are proposing to delete the sentence, "In the event of any conflict between Appendix D and this Consent Decree, this Consent Decree shall control," because the definition of "Consent Decree" in Paragraph 8.i already states such.
- In Paragraph 41, we are proposing to add a sentence making it clear that reports are required to be posted to the Public Document Repository.
- In Paragraph 98, the collective Region 4 guidance is on "Capacity, Management, Operation, and Maintenance" ("CMOM"), so we are keeping both "Capacity" and "C" in this reference.

Finally, we agree to your edits to Paragraph 7 sent on 3/14/19, with the addition of the word "all" in the context of the goal of eliminating SSOs. So, paragraph 7, as currently proposed by the Government reads, "7. The objective of this Consent Decree is for the City to achieve and maintain full compliance with the CWA, the MAWPCL, and the NPDES Permits, including the goal of eliminating <u>all</u> Sanitary Sewer Overflows. With respect to their applicable scopes of action as set forth in this Consent Decree, all plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall be designed with the collective goal of achieving this objective." This is consistent with our previously-agreed-upon language for this paragraph.

We would appreciate the City's expeditious review and approval of this document, and ask that you provide the City's final approval in writing within fifteen (15) days of receipt of this email. The City should not sign the CD at this time; rather, the City's approval will allow the Government to begin steps towards obtaining necessary signatures. We will advise you when City signature is needed. Let me know if you have any further questions or concerns.

Thank you,
Suzanne

Hattiesburg CD 03192019.pdf

SUZANNE K. ARMOR | ATTORNEY-ADVISOR
United States Environmental Protection Agency
Office of Regional Counsel
Office of Water Legal Support
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
tel: 404.562.9701
fax: 404.562.8078
armor.suzanne@epa.gov

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-----Original Message-----
From: Armor, Suzanne
Sent: Thursday, March 14, 2019 3:13 PM
To: 'John Milner' <jmilner@brunini.com>
Cc: Gene Wasson <gwasson@brunini.com>
Subject: RE: City of Hattiesburg, MS - draft SSOs consent decree

Thanks, John and Gene. We will get back to you as soon as possible after our team has considered these proposed edits.

Best,
Suzanne

-----Original Message-----
From: John Milner <jmilner@brunini.com>
Sent: Thursday, March 14, 2019 2:27 PM
To: Gene Wasson <gwasson@brunini.com>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: Re: City of Hattiesburg, MS - draft SSOs consent decree

Suzanne,

Gene sent this to you as well in PDF format. Let us know if you have questions. Thanks

John

Sent from my iPhone

On Mar 14, 2019, at 2:22 PM, Gene Wasson <gwasson@brunini.com<mailto:gwasson@brunini.com>> wrote:

Suzanne, please see the attached pdf.

Gene Wasson
E: gwasson@brunini.com<mailto:gwasson@brunini.com>
P: 601-960-6897 F: 601-960-6902

==========

John E. Milner
E: jmilner@brunini.com<mailto:jmilner@brunini.com>
P: 601-960-6842 F: 601-960-6902

[http://www.brunini.com/wp-content/uploads/2016/06/BGGH-FullLogo.gif]

The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201 Post Office Drawer 119, Jackson, MS 39205

Error! Hyperlink reference not valid.>
Bio<http://www.brunini.com/attorneys-31.html> / V-Card<http://www.brunini.com/vcard-31.vcf>

Confidentiality Statement
The information contained in this electronic message from the law firm of Brunini, Grantham, Grower & Hewes, PLLC is confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited. If you have received this electronic message in error, please notify us immediately by telephone at (601) 948-3101.
From: Armor, Suzanne [mailto:Armor.Suzanne@epa.gov]
Sent: Thursday, March 14, 2019 12:59 PM
To: John Milner
Cc: Gene Wasson
Subject: RE: City of Hattiesburg, MS - draft SSOs consent decree

Thanks, John. For some reason, I'm not seeing this as a red-line. Before I send this along to my colleagues, I want to confirm with you that I understand what changes you are proposing. What I think you are proposing, which I've highlighted in yellow in your email below, is:

- Moving "including the goal of eliminating Sanitary Sewer Overflows" at the end of the first sentence.
- Adding a new clause to the beginning of the second sentence, which would read, "With respect to their applicable scopes of action as set forth in this Consent Decree . . . ."
- Adding "with the collective goal of" to the end of the second sentence.

I tried to put your red-line back in below, with underlines being new/moved language, and strikethroughs for deleted language. Did I capture it accurately?

<image001.jpg>Suzanne K. Armor | Attorney-Advisor
United States Environmental Protection Agency Office of Regional Counsel Office of Water Legal Support
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
tel: 404.562.9701
fax: 404.562.8078
armor.suzanne@epa.gov<mailto:armor.suzanne@epa.gov>

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-----Original Message-----
From: John Milner <jmilner@brunini.com<mailto:jmilner@brunini.com>>
Sent: Thursday, March 14, 2019 11:57 AM
To: Armor, Suzanne <Armor.Suzanne@epa.gov<mailto:Armor.Suzanne@epa.gov>>
Cc: Gene Wasson <gwasson@brunini.com<mailto:gwasson@brunini.com>>
Subject: City of Hattiesburg, MS - draft SSOs consent decree

Suzanne,

As I communicated earlier, the City of Hattiesburg proposes that EPA's current version of Section 7 of the draft SSOs consent decree, as reflected in your February 5, 2019 e-mail, be revised as indicated in the redlined version below:

7. The objective of this Consent Decree is for the City to eliminate Sanitary Sewer Overflows, and to achieve and maintain full compliance with the CWA, the MAWPCL, and the NPDES Permits, including the goal of eliminating Sanitary Sewer Overflows. With respect to their applicable scopes of action as set forth in this Consent Decree, Aall plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall be designed with the collective goal of to achieve achieving this objective, including the goal of eliminating all SSOs.

City's explanation of proposed revisions to Section 7:

(1) The phrase, "with respect to their applicable scopes of action as set forth in this Consent Decree", is intended to reflect that (a) with respect to the remediation activities required by the Consent Decree in Paragraphs 19-22, these activities are limited to the Priority Areas, while (b) the MOM portion of the CD in Paragraph 23 (except subparagraph "i") is not limited to the Priority Areas.

(2) "Collective" is intended to reflect that the plans, measures, etc. are interconnected and progressive and not intended to independently achieve the goal of eliminating SSOs.

(3) The other proposed revisions are intended to re-position the "goal of eliminating of Sanitary Sewer Overflows" to be located within the context of the broader objective to "achieve and maintain full compliance with the CWA, the MAWPCL, and the NPDES Permits", as it was in prior versions of the draft CD.

After you and your colleagues have had an opportunity to review these proposed revisions to Section 7, please let me know if you would like to discuss them.

John

Sent from my iPad

John E. Milner
E: jmilner@brunini.com<mailto:jmilner@brunini.com<mailto:jmilner@brunini.com%3cmailto:jmilner@brunini.com>>
P: 601-960-6842 F: 601-960-6902

[http://www.brunini.com/wp-content/uploads/2016/06/BGGH-FullLogo.gif]

The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201 Post Office Drawer 119, Jackson, MS 39205

Error! Hyperlink reference not valid.>>
Bio<http://www.brunini.com/attorneys-31.html> / V-Card<http://www.brunini.com/vcard-31.vcf>

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<Redline of Section 7 of draft consent decree (03250096).pdf> <3bclean-control.bin>

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 6/28/2019 6:04:41 PM
To: Rae, Sarah [Rae.Sarah@epa.gov]; Elliott, Richard [Elliott.Richard@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]
Subject: Armor, Suzanne shared "Hattiesburg Approval Memo_06282019_wo SEP" with you.

Hi, all - Here is my first shot at the CD approval memo for Hattiesburg, without the SEP. Sending to you so you can start reviewing while I'm on leave and we work out the SEP issue. Thanks!
-Suzanne

This link only works for the direct recipients of this message.

Hattiesburg Approval Memo_06282019_wo SEP

Open

Microsoft OneDrive

Microsoft respects your privacy. To learn more, please read our Privacy Statement.
Microsoft Corporation, One Microsoft Way, Redmond, WA 98052

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 5/9/2019 2:10:34 PM
To: Elliott, Richard [Elliott.Richard@epa.gov]
CC: Sayre, Dennis [Sayre.Dennis@epa.gov]
Subject: RE: Hattiesburg, MS - need information re SEP and Penalty

I think we have what we need for right now. Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

From: Elliott, Richard
Sent: Wednesday, May 8, 2019 5:26 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Sayre, Dennis <Sayre.Dennis@epa.gov>
Subject: RE: Hattiesburg, MS - need information re SEP and Penalty

Suzanne,

Both Dennis and I are in KY on inspection. We can touch base if you (by phone) have something that you must take care of immediately, otherwise we will be back next week.

Richard Elliott, P.E., PMP
Environmental Engineer

From: Armor, Suzanne
Sent: Wednesday, May 8, 2019 12:51 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Cc: Fentress, Robert <Fentress.Robert@epa.gov>
Subject: RE: Hattiesburg, MS - need information re SEP and Penalty

Ex. 5 AC/AWP/DP

From: Gonzalez, Sarah
Sent: Wednesday, May 8, 2019 12:47 PM
To: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Cc: Fentress, Robert <Fentress.Robert@epa.gov>
Subject: RE: Hattiesburg, MS - need information re SEP and Penalty

Thanks so much Valerie! Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)

gonzalez.sarah@epa.gov

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Wednesday, May 08, 2019 12:43 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Cc: Fentress, Robert <Fentress.Robert@epa.gov>
Subject: RE: Hattiesburg, MS - need information re SEP and Penalty

Ex. 5 AC/AWP/DP

--Valerie Mann
US DOJ EES
202 616 8756

From: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Sent: Wednesday, May 8, 2019 12:04 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>
Cc: Fentress, Robert <Fentress.Robert@epa.gov>
Subject: RE: Hattiesburg, MS - need information re SEP and Penalty

Ex. 5 - Deliberative Process (DP) & Attorney-Client (AC), AWP

Thank you in advance for your help in tracking down this information!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Gonzalez, Sarah
Sent: Wednesday, May 08, 2019 11:34 AM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Cc: Fentress, Robert <Fentress.Robert@epa.gov>
Subject: Hattiesburg, MS - need information re SEP and Penalty
Importance: High

Good morning Suzanne and Valerie,

Ex. 5 AC/AWP/DP

I see that both Denis and Richard have out of office messages. I have also CCed Bob Fentress since he was the HQ attorney on this case before I took over.

Thank you in advance for your help in tracking down this information!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

It is important to think beyond yourself.

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Message

From: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
Sent: 2/22/2017 4:04:12 PM
To: Bush, William [Bush.William@epa.gov]
CC: Elliott, Richard [Elliott.Richard@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]; Fentress, Robert [Fentress.Robert@epa.gov]
Subject: RE: Hattiesburg - Action Item List from 2/7/17 Meeting
Attachments: Appendix A Rev 3.pdf

Ex. 5 Attorney Client (AC)

From: Mann, Valerie (ENRD)
Sent: Tuesday, February 21, 2017 11:56 AM
To: 'Bush, William' <Bush.William@epa.gov>; Fentress, Robert <Fentress.Robert@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Subject: RE: Hattiesburg - Action Item List from 2/7/17 Meeting

Ex. 5 Attorney Client (AC)

From: Bush, William [mailto:Bush.William@epa.gov]
Sent: Tuesday, February 21, 2017 11:47 AM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>; Fentress, Robert <Fentress.Robert@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Subject: FW: Hattiesburg - Action Item List from 2/7/17 Meeting

Ex. 5 Attorney Client (AC)

Thanks.

From: Bush, William
Sent: Wednesday, February 08, 2017 4:55 PM
To: jmilner@brunini.com; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>; Fentress, Robert <Fentress.Robert@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Horsey, Maurice <Horsey.Maurice@epa.gov>; Gretchen Zmitrovich <GZMITROVICH@mdeq.ms.gov>
Cc: Bush, William <Bush.William@epa.gov>
Subject: Hattiesburg - Action Item List from 2/7/17 Meeting

Here are our action items. Let me know I missed something or got something wrong. Thanks.

1. The City will be submitting a letter to EPA and MDEQ setting forth its request and justification for a payment plan for the penalty. It would be helpful to provide as much detail as possible as to why the City feels this is necessary and the specific payment details regarding the number and timing of installments.

As we discussed at the meeting, please keep in mind the following timeline when setting forth your proposal for a payment schedule. The CD as currently drafted requires the penalty to be paid 30 days after Entry of the CD by the Court. So even if we finalize all of the terms of the CD within the next month, the CD would likely not be lodged any

earlier than the first of May as it has to go through all of our respective approval processes. Once the CD is lodged, a 30 day public comment period will be initiated so that would take us to at least to the first of June when the comment period expires. Assuming there were no comments that would warrant the United States to change the CD, the United States would then prepare and file a motion to enter the CD that will include a responsiveness summary to any comments that are received. The earliest that this would likely occur is the first of July. At this point, the Court could immediately act to enter the CD or sit on it for a while - you never know. Assuming the Court acts quickly, the earliest the CD would likely be entered is sometime in July. Thus the earliest time the City would be required to pay the penalty based on the current wording of the CD would be sometime in August. I mention all of this because if the City can make all or a portion of the penalty payment within this earliest timeframe of August, then there may not be a need for a payment schedule or one that is very drawn out. John, call me if you need me to explain this further.

2. The City will consider voluntarily submitting the SORP and ERP earlier than the current deadline set forth in the CD.

3. DOJ will proof Appendices A, B and C to confirm her suggested edits were made and will let John know.

4. The City will revise maps C -1 to label a portion of sewershed 36 and will revise C-2 to label a portion of sewershed 44.

5. The City will correct the typo in paragraph 11 of Appendix A.

6. The City will remove the dates under the title pages of Appendices A, B and C.

7. The City will send out a complete set of Appendices A, B and C once these final changes are made.

8. The EPA/DOJ will draft and send out draft language for the SEP Section of the CD and stipulated penalties for failure to perform the SEP.
(Valerie, give me a call at your convenience to discuss).

9. The EPA will send out a markup of Appendix E for the SEP.

10. The City will contemplate a proposal for an appropriate deadline for SEP completion and schedule for escrow account deposits.

11. The City will send out the SSO list in an excel spreadsheet (John, I could not find an email where you sent that to me already so please resend).

12. The City will submit to the EPA and MDEQ a summary of its community engagement efforts to date.

13. The City will submit draft language for new Paragraph 23.k – Chronic SSO Advanced Monitoring Program to replace current Paragraph 23.a.(6) using EPA's original language as much as possible.

14. The City will provide to DOJ the information for whom penalty payment instructions should be sent as set forth in Paragraph 26 of the CD.

15. DOJ will get out a revised draft of the CD based on the matters discussed at the meeting:
- accepting all previous edits
- add Whereas clause re failure to report
- add approximately 900 SSOs as estimate of past SSOs
- add reference to 3rd Amended State Order dated Dec 7, 2016
- delete Paragraph 23.a.(6) and insert placeholder for new Paragraph 23.k.

Message

From: Rae, Sarah [Rae.Sarah@epa.gov]
Sent: 6/18/2019 3:18:06 PM
To: Elliott, Richard [Elliott.Richard@epa.gov]; Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]; Armor, Suzanne [Armor.Suzanne@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

I am pretty booked tomorrow, Thursday is free. Call can go ahead with out me if Wednesday works best for everyone else.

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Elliott, Richard
Sent: Tuesday, June 18, 2019 10:31 AM
To: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Cc: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Suzanne,

I will be on leave for 2 weeks starting this Thursday. I am available Wednesday afternoon (morning is booked) but it does not seem like Valarie is.

Ex. 5 Attorney Client (AC)

Richard Elliott, P.E., PMP
Environmental Engineer

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Tuesday, June 18, 2019 10:18 AM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Cc: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

I am available Wed morn before 10:30 and Thurs aft after 1pm.

From: Armor, Suzanne <Armor.Suzanne@epa.gov>
Sent: Tuesday, June 18, 2019 10:14 AM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Cc: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Dennis & Richard –

What is your availability this week? Thursday afternoon looks good for me, as does tomorrow morning. Let me know some times, and I'll proposed to John.

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Tuesday, June 18, 2019 10:00 AM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Cc: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

I can be in on the call (but don't insist on it). When did you want to have it? I'm mostly around but am unavailable most of Friday for work travel.

From: Armor, Suzanne <Armor.Suzanne@epa.gov>
Sent: Tuesday, June 18, 2019 9:36 AM
To: Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Cc: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>; Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Ex. 5 Attorney Client (AC)

Thanks,
Suzanne

From: Armor, Suzanne
Sent: Monday, May 20, 2019 11:36 AM
To: Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

From: Sayre, Dennis
Sent: Monday, May 20, 2019 11:00 AM
To: Elliott, Richard <Elliott.Richard@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

I don't have any 9:00 meeting in my calendar. ??

Dennis J. Sayre
Drinking Water & Wastewater Enforcement Section
(404) 562-9756

From: Elliott, Richard
Sent: Monday, May 20, 2019 10:44 AM
To: Sayre, Dennis <Sayre.Dennis@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Dennis are you sure you are available at 9:00... I thought we had a Section meeting at 9:00 and a mandatory training from 10-11:30? I am available from 1-2pm as well as from 3:00 to 4:00. Ex. 5 Attorney Client (AC)
Ex. 5 Attorney Client (AC) Are we having a case team meeting?

Richard Elliott, P.E., PMP
Environmental Engineer

From: Sayre, Dennis
Sent: Monday, May 20, 2019 10:09 AM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

I'm available at 9:00, 11:30 and 3:00 tomorrow. I'll be out of the office (teleworking) Wednesday.

Dennis J. Sayre
Drinking Water & Wastewater Enforcement Section
(404) 562-9756

From: Armor, Suzanne
Sent: Monday, May 20, 2019 9:48 AM
To: Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Richard & Dennis –

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Thanks,
Suzanne

From: Elliott, Richard
Sent: Thursday, May 16, 2019 12:57 PM
To: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Ex. 5 Attorney Client (AC)

Richard Elliott, P.E., PMP
Environmental Engineer

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Thursday, May 16, 2019 12:42 PM
To: Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Dennis,
Ex. 5 Attorney Client (AC)
--Valerie

From: Sayre, Dennis <Sayre.Dennis@epa.gov>
Sent: Thursday, May 16, 2019 12:04 PM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>; Elliott, Richard <Elliott.Richard@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Ex. 5 Attorney Client (AC)

Dennis J. Sayre
Drinking Water & Wastewater Enforcement Section
(404) 562-9756

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Thursday, May 16, 2019 11:26 AM
To: Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

ow

ed

Ex. 5 Attorney Client (AC)

From: Mann, Valerie (ENRD)
Sent: Wednesday, May 15, 2019 5:05 PM
To: Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; L. Zmitrovich Gretchen (GZMITROVICH@mdeq.ms.gov) <GZMITROVICH@mdeq.ms.gov>
Subject: FW: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Ex. 5 Attorney Client (AC)

From: John Milner <jmilner@brunini.com>
Sent: Wednesday, May 15, 2019 4:50 PM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Gene Wasson <gwasson@brunini.com>
Subject: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Valerie and Suzanne,

As you requested, the City team members have updated Appendix A (completed projects) and Appendix B (early action projects /pending projects), as well as the maps for these appendices. These updated appendices and maps are attached. Additionally, summaries of these updated appendices are set forth below. We have also attached Appendix C, together with its maps, for your convenience although there were no changes that were made to Appendix C.

Updated Appendix A summary:

1. Added Projects 14 – 17.

2. The scheduled completion dates for Projects 14 and 17 are December 31, 2019 and June 1, 2020, respectively. Obviously these projects are not complete at present. **We request your guidance on whether to move these back to Appendix B, based on your expectations as to review, execution, lodging, judicial approval, etc.**

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Updated Appendix B summary:

1. Projects 1, 3 and 4 on the old version were moved to Appendix A.

2. Project 2 on the old version became Project 1 on the new version. It remained the same except that the scheduled completion date changed from August 31, 2019 to December 31, 2020.

3. Project 5 on the old version became Project 2 on the new version.

Please provide your comments and guidance after your review. Please feel free to contact me if you have any questions. Thanks

John

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

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Sent: 6/18/2019 2:47:47 PM
To: Elliott, Richard [Elliott.Richard@epa.gov]; Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]; Armor, Suzanne [Armor.Suzanne@epa.gov]
CC: Rae, Sarah [Rae.Sarah@epa.gov]
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Ex. 5 Attorney Client (AC) I'm slammed tomorrow but I don't need to be on the call.

Dennis J. Sayre
Drinking Water & Wastewater Enforcement Section
(404) 562-9756

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Suzanne,

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Environmental Engineer

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Dennis are you sure you are available at 9:00... I thought we had a Section meeting at 9:00 and a mandatory training from 10-11:30? I am available from 1-2pm as well as from 3:00 to 4:00. Ex. 5 Attorney Client (AC)
Ex. 5 AC / Ex. 7(A) Are we having a case team meeting?

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Environmental Engineer

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Richard & Dennis –

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Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; L. Zmitrovich Gretchen (GZMITROVICH@mdeq.ms.gov) <GZMITROVICH@mdeq.ms.gov>
Subject: FW: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

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Valerie and Suzanne,

As you requested, the City team members have updated Appendix A (completed projects) and Appendix B (early action projects /pending projects), as well as the maps for these appendices. These updated appendices and maps are attached. Additionally, summaries of these updated appendices are set forth below. We have also attached Appendix C, together with its maps, for your convenience although there were no changes that were made to Appendix C.

Updated Appendix A summary:

1. Added Projects 14 – 17.

2. The scheduled completion dates for Projects 14 and 17 are December 31, 2019 and June 1, 2020, respectively. Obviously these projects are not complete at present. **We request your guidance on whether to move these back to Appendix B, based on your expectations as to review, execution, lodging, judicial approval, etc.**

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Please provide your comments and guidance after your review. Please feel free to contact me if you have any questions. Thanks

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CC: Rae, Sarah [Rae.Sarah@epa.gov]
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

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To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Cc: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

I am available Wed morn before 10:30 and Thurs aft after 1pm.

From: Armor, Suzanne <Armor.Suzanne@epa.gov>
Sent: Tuesday, June 18, 2019 10:14 AM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Cc: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Dennis & Richard –

What is your availability this week? Thursday afternoon looks good for me, as does tomorrow morning. Let me know some times, and I'll proposed to John.

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Tuesday, June 18, 2019 10:00 AM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Cc: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

I can be in on the call (but don't insist on it). When did you want to have it? I'm mostly around but am unavailable most of Friday for work travel.

From: Armor, Suzanne <Armor.Suzanne@epa.gov>
Sent: Tuesday, June 18, 2019 9:36 AM
To: Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Cc: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>; Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Ex. 5 Attorney Client (AC)

Thanks,
Suzanne

From: Armor, Suzanne
Sent: Monday, May 20, 2019 11:36 AM
To: Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

I'm out until noon tomorrow, and I have another obligation from 3-4 tomorrow afternoon. Can we meet on Wednesday? We can patch Dennis in by phone.

Ex. 5 Attorney Client (AC)

From: Sayre, Dennis
Sent: Monday, May 20, 2019 11:00 AM
To: Elliott, Richard <Elliott.Richard@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

I don't have any 9:00 meeting in my calendar. ??

Dennis J. Sayre
Drinking Water & Wastewater Enforcement Section
(404) 562-9756

From: Elliott, Richard
Sent: Monday, May 20, 2019 10:44 AM
To: Sayre, Dennis <Sayre.Dennis@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Dennis are you sure you are available at 9:00... I thought we had a Section meeting at 9:00 and a mandatory training from 10-11:30? I am available from 1-2pm as well as from 3:00 to 4:00. Ex. 5 Attorney Client (AC)
Ex. 5 Attorney Client (AC) Are we having a case team meeting?

Richard Elliott, P.E., PMP
Environmental Engineer

From: Sayre, Dennis
Sent: Monday, May 20, 2019 10:09 AM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

I'm available at 9:00, 11:30 and 3:00 tomorrow. I'll be out of the office (teleworking) Wednesday.

Dennis J. Sayre
Drinking Water & Wastewater Enforcement Section
(404) 562-9756

From: Armor, Suzanne
Sent: Monday, May 20, 2019 9:48 AM
To: Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Richard & Dennis –

Ex. 5 Attorney Client (AC)

Thanks,
Suzanne

From: Elliott, Richard
Sent: Thursday, May 16, 2019 12:57 PM
To: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Armor, Suzanne

<Armor.Suzanne@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Ex. 5 Attorney Client (AC)

Richard Elliott, P.E., PMP
Environmental Engineer

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Thursday, May 16, 2019 12:42 PM
To: Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Dennis,

Ex. 5 Attorney Client (AC)

--Valerie

From: Sayre, Dennis <Sayre.Dennis@epa.gov>
Sent: Thursday, May 16, 2019 12:04 PM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>; Elliott, Richard <Elliott.Richard@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Ex. 5 Attorney Client (AC)

Dennis J. Sayre
Drinking Water & Wastewater Enforcement Section
(404) 562-9756

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Thursday, May 16, 2019 11:26 AM
To: Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

From: Mann, Valerie (ENRD)
Sent: Wednesday, May 15, 2019 5:05 PM
To: Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; L. Zmitrovich Gretchen (GZMITROVICH@mdeq.ms.gov) <GZMITROVICH@mdeq.ms.gov>
Subject: FW: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Ex. 5 Attorney Client (AC)

From: John Milner <jmilner@brunini.com>
Sent: Wednesday, May 15, 2019 4:50 PM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Gene Wasson <gwasson@brunini.com>
Subject: City of Hattiesburg - draft SSOs consent decree - revised Appendices A and B

Valerie and Suzanne,

As you requested, the City team members have updated Appendix A (completed projects) and Appendix B (early action projects /pending projects), as well as the maps for these appendices. These updated appendices and maps are attached. Additionally, summaries of these updated appendices are set forth below. We have also attached Appendix C, together with its maps, for your convenience although there were no changes that were made to Appendix C.

Updated Appendix A summary:

1. Added Projects 14 – 17.

2. The scheduled completion dates for Projects 14 and 17 are December 31, 2019 and June 1, 2020, respectively. Obviously these projects are not complete at present. **We request your guidance on whether to move these back to Appendix B, based on your expectations as to review, execution, lodging, judicial approval, etc.**

3. The new project descriptions do not directly correspond to what was on the prior Appendix B because the City added work, divided projects, etc., as described below. These changes resulted only in increased work, not reductions.

4. Project 14 on Appendix A was Project 3 on the prior Appendix B. The amount of work was increased. Work is underway and is scheduled for completion by December 31, 2019.

5. Project 15 on Appendix A was Project 4 on the prior Appendix B. The amount of work was increased. This project is complete except for paperwork.

6. Projects 16 and 17 on Appendix A were Project 1 on the prior Appendix B. The amount of work was increased and divided into two projects. Project 16 is complete, and Project 17 is underway and scheduled to be completed by June 1, 2020.

Updated Appendix B summary:

1. Projects 1, 3 and 4 on the old version were moved to Appendix A.

2. Project 2 on the old version became Project 1 on the new version. It remained the same except that the scheduled completion date changed from August 31, 2019 to December 31, 2020.

3. Project 5 on the old version became Project 2 on the new version.

Please provide your comments and guidance after your review. Please feel free to contact me if you have any questions. Thanks

John

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201
Post Office Drawer 119, Jackson, MS 39205

www.brunini.com
Bio / V-Card

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Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 5/8/2019 4:49:19 PM
To: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]; Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]; Elliott, Richard [Elliott.Richard@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]
CC: Fentress, Robert [Fentress.Robert@epa.gov]
Subject: RE: Hattiesburg, MS - need information re SEP and Penalty

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC) He's out until the end of May, so I can't verify that with him before tomorrow's OECA meeting on this, though.

SUZANNE K. ARMOR | ATTORNEY-ADVISOR
United States Environmental Protection Agency
Office of Regional Counsel
Office of Water Legal Support
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
tel: 404.562.9701
fax: 404.562.8078
armor.suzanne@epa.gov

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From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Wednesday, May 8, 2019 12:43 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Cc: Fentress, Robert <Fentress.Robert@epa.gov>
Subject: RE: Hattiesburg, MS - need information re SEP and Penalty

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

--Valerie Mann
US DOJ EES
202 616 8756

From: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Sent: Wednesday, May 8, 2019 12:04 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>
Cc: Fentress, Robert <Fentress.Robert@epa.gov>
Subject: RE: Hattiesburg, MS - need information re SEP and Penalty

Ex. 5 AC/AWP/DP

I see that both Denis and Richard have out of office messages. I have also CCed Bob Fentress since he was the HQ attorney on this case before I took over.

Thank you in advance for your help in tracking down this information!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Gonzalez, Sarah
Sent: Wednesday, May 08, 2019 11:34 AM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Cc: Fentress, Robert <Fentress.Robert@epa.gov>
Subject: Hattiesburg, MS - need information re SEP and Penalty
Importance: High

Good morning Suzanne and Valerie,

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

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gonzalez.sarah@epa.gov

It is important to think beyond yourself.

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Message

From: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
Sent: 5/8/2019 4:43:12 PM
To: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]; Armor, Suzanne [Armor.Suzanne@epa.gov]; Elliott, Richard [Elliott.Richard@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]
CC: Fentress, Robert [Fentress.Robert@epa.gov]
Subject: RE: Hattiesburg, MS - need information re SEP and Penalty

Ex. 5 AC/AWP/DP

--Valerie Mann
US DOJ EES
202 616 8756

From: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Sent: Wednesday, May 8, 2019 12:04 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>
Cc: Fentress, Robert <Fentress.Robert@epa.gov>
Subject: RE: Hattiesburg, MS - need information re SEP and Penalty

Ex. 5 AC/AWP/DP

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Thank you in advance for your help in tracking down this information!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Gonzalez, Sarah
Sent: Wednesday, May 08, 2019 11:34 AM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Cc: Fentress, Robert <Fentress.Robert@epa.gov>
Subject: Hattiesburg, MS - need information re SEP and Penalty
Importance: High

Good morning Suzanne and Valerie,

Ex. 5 AC/AWP/DP

I see that both Denis and Richard have out of office messages. I have also CCed Bob Fentress since he was the HQ attorney on this case before I took over.

Thank you in advance for your help in tracking down this information!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

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Please consider the environment before printing this email

Message

From: Elliott, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3312FCA56324A0A896ABEFAA0BBC981-ELLIOTT, RICHARD]
Sent: 5/16/2017 7:05:02 PM
To: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
Subject: RE: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

Valerie,

Ex. 5 Attorney Client (AC)

Richard Elliott, P.E., PMP
Environmental Engineer

From: Mann, Valerie (ENRD) [mailto:Valerie.Mann@usdoj.gov]
Sent: Thursday, May 11, 2017 1:51 PM
To: Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>
Cc: Bush, William <Bush.William@epa.gov>
Subject: FW: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

Ex. 5 Attorney Client (AC)

Thanks,
Valerie

From: Bush, William [mailto:Bush.William@epa.gov]
Sent: Wednesday, May 03, 2017 10:03 AM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>; Fentress, Robert <Fentress.Robert@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Gretchen Zmitrovich <GZMITROVICH@mdeq.ms.gov>; Gretchen_Zmitrovich@deq.state.ms.us
Subject: FW: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

---

From: John Milner [mailto:jmilner@brunini.com]
Sent: Tuesday, May 02, 2017 6:22 PM
To: 'Mann, Valerie (ENRD)' <Valerie.Mann@usdoj.gov>
Cc: Bush, William <Bush.William@epa.gov>
Subject: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

Valerie,

Please see the following responses to your prior action item requests and the attached deliverables that are currently available:

1. The City has asked to submit a letter to EPA and MDEQ setting forth its request and justification for a payment plan for the penalty. If City wants to pursue this, send ASAP. It would be helpful to provide as much detail as

possible as to why the City feels this is necessary and the specific payment details regarding the number and timing of installments.

The City will provide a letter by May 17 which requests a payment plan in four equal installments during the following four months over the next two fiscal years:

November, 2017
May, 2018
November, 2018
May, 2019

2. The City will consider voluntarily submitting the SORP and ERP earlier than the current deadline set forth in the CD.

   The City is in the process of preparing the SORP and ERP and is definitely considering the voluntary submission of the SORP and ERP earlier than the CD deadline.

3. DOJ has proofed Appendices A, B and C and raised one suggested edit/question re boring. City owes a response.

   See the attached revised Appendices A, B and C.

4. The City will revise maps C -1 to label a portion of sewershed 36 and will revise C-2 to label a portion of sewershed 44.

   See the attached revised maps.

5. The City will correct the typo in paragraph 11 of Appendix A.

   See the attached revised Appendix A.

6. The City will remove the dates under the title pages of Appendices A, B and C.

   See the attached revised Appendices A, B and C.

7. The City will send out a complete set of Appendices A, B and C once these final changes are made.

   See the attached revised Appendices A, B and C.

8. The EPA will send out a markup of Appendix E for the SEP.

   The City has reviewed the DOJ April 5 markup of the Appendix E for the SEP and has no changes to propose to the markup.

9. The City will contemplate a proposal for an appropriate deadline for SEP completion and schedule for escrow account deposits.

   The City will provide this proposal by May 17.

10. The City will send out the SSO list in an excel spreadsheet (John, Bill B could not find an email where you sent that already so please resend).

    This list will be sent to you, as well as additional documents, tomorrow (May 3) after a meeting in Hattiesburg with the City team.

11. The City will submit to the EPA and MDEQ a summary of its community engagement efforts to date.

    A summary will be provided by May 10, which will reflect the following community engagement meetings:

    East Jerusalem Neighborhood association on 4/14/16
    Arcadia sunset neighborhood association meeting on 4/21/16
    Parkhaven neighborhood association meeting on 6/9/16
    Grace Christian Neighborhood on 8/11/16 at 6pm
    The Avenues Neighborhood Association on 8/22/16 at 6pm
    The Cottages Neighborhood Association on 11/01/16 at 6pm
    Highland Neighborhood Association on 11/14/16 at 6 pm (Reggie Barrino was in attendance)

    Please see the attached power point presentation that was presented at these meetings.

12. The City will submit draft language for new Paragraph 23.k – Chronic SSO Advanced Monitoring Program to replace current Paragraph 23.a.(6) using EPA's original language as much as possible.

    The City team is meeting tomorrow and next week to address this issue and will submit proposed language for this provision by May 17.

13. The City will provide to DOJ the information for whom penalty payment instructions should be sent as set forth in Paragraph 26 of the CD.

    The City will provide these instructions by May 17.

Valerie, in addition to these action items, as I have mentioned to you and Bill earlier, the City is reviewing the Capacity Assurance Program provisions of the CD, Paragraph 23.i (pp. 35 – 40 of your latest CD redlined draft) and will provide comments on issues related to these provisions by May 17 after meetings tomorrow and next week.

If you have any questions concerning this message or the attachments, please feel free to contact me. Thanks

John

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201
Post Office Drawer 119, Jackson, MS 39205

www.brunini.com
Bio / V-Card

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Message

From: Elliott, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3312FCA56324A0A896ABEFAA0BBC981-ELLIOTT, RICHARD]
Sent: 5/9/2017 11:04:30 AM
To: Sayre, Dennis [Sayre.Dennis@epa.gov]
Subject: RE: Revised draft response to Valerie for your review

Ex. 5 Attorney Client (AC)

Richard Elliott, P.E., PMP
Environmental Engineer

From: Sayre, Dennis
Sent: Monday, May 08, 2017 4:22 PM
To: Elliott, Richard <Elliott.Richard@epa.gov>
Subject: FW: Revised draft response to Valerie for your review

Ex. 5 Attorney Client (AC)

Dennis J. Sayre ¦ Environmental Engineer ¦ Inspector
NPDES Permitting and Enforcement Branch ¦ Municipal & Industrial Enforcement Section
(404) 562-9756

Mailing Address:
EPA - Water Protection Division
Attn: Dennis Sayre
61 Forsyth Street SW, 9T25
Atlanta, Georgia 30303

From: Bush, William
Sent: Monday, May 08, 2017 12:03 PM
To: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Cc: Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Fentress, Robert <Fentress.Robert@epa.gov>; Bush, William <Bush.William@epa.gov>
Subject: RE: Revised draft response to Valerie for your review

Thanks, Valerie.

Ex. 5 Attorney Client (AC)

Richard and Dennis,

Ex. 5 Attorney Client (AC)

We are trying to set up a quick call with them for today or on Wednesday between 10:30 and 3:30. We'll let you know what time and hopefully one of you is available then.

From: Mann, Valerie (ENRD) [mailto:Valerie.Mann@usdoj.gov]
Sent: Monday, May 08, 2017 9:52 AM
To: Bush, William <Bush.William@epa.gov>
Subject: FW: Revised draft response to Valerie for your review

Bill,

Ex. 5 Attorney Client (AC)

From: John Milner [mailto:jmilner@brunini.com]
Sent: Wednesday, May 03, 2017 6:56 PM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>
Cc: Bush.William@epa.gov
Subject: FW: Revised draft response to Valerie for your review

Valerie,

Please see the supplemented versions of my responses to your action items 10. and 12, with available applicable attachments, as well as supplemental comments and questions concerning the Capacity Assurance Program (CAP) provisions of the draft consent decree (CD) and a request for a conference call concerning all of these issues:

> 10. The City will send out the SSO list in an excel spreadsheet (John, Bill B could not find an email where you sent that already so please resend).

Attached please find the requested spreadsheet of the COH's SSO list from the period of January 1, 2012 through September 30, 2016. Also attached are ArcGIS shape files which map the calls that are related to the SSO list. These shape files may contain some inaccuracies due to data conversion that may result in a slightly different total number of points being located on the map. This process is being refined currently and the attached shapefile is being sent as part of a request by EPA staff members at the last Atlanta meeting at Region 4 headquarters.

12. The City will submit draft language for new Paragraph 23.k – Chronic SSO Advanced Monitoring Program to replace current Paragraph 23.a.(6) using EPA's original language as much as possible.

As part of the discussion for drafting this language, the City needs guidance from the EPA. In an effort to be effective with regard to compliance and cost, the City has tried to look at methodology of implementation. One matter that has been discussed relates to the monitoring of "successive SSOs" (which could also be referred to as "dependents SSOs"). Could these SSOs be monitored at a common flow point such as a common lift station? Also, the original language in the CD called for flow monitoring each SSO location. Can other equipment be considered such as high water sensors and head sensors? These devices are more easily implemented and are more cost effective than a flow monitoring system. The goal is to assess the potential cost to the City of implementing a program that would be acceptable under the CD.

On another issue, as stated in my last e-mail, the City is also requesting clarification regarding implementation of the CAP. The CD CAP provisions currently require the City to manage a "banking" system for credits in relation to capacity assurance. When would projects be eligible for consideration in the "banking" system? In Appendix A, the City has outlined projects that have been recently completed to improve the sewer collection and treatment system. If the City develops a methodology for crediting projects, would the City be able to bank credits for these documented projects? Also, would the Early Action Projects outlined in Appendix B be eligible? The goal here is to determine the value of the "bank" at the point of implementation of the CAP. The City needs to know the answers to these (and perhaps other) questions at this point so that the City will have confidence that it will be able to comply with the CAP provisions of the CD.

Valerie and Bill, the City believes that it would be advantageous to schedule a conference call among the City, EPA and DOJ next week to discuss these issues so that applicable CD language can be proposed by the City to address them. The technical and operational details relating to these issues are easier to explain, discuss and obtain answers in a conference call setting. I look forward to your response regarding the conference call request. Thanks

John

From: Shea McNease [mailto:Shea@sd-w.com]
Sent: Wednesday, May 03, 2017 5:16 PM
To: John Milner
Subject: RE: Revised draft response to Valerie for your review

John,

Please find my responses to the earlier email request from the DOJ and EPA.

10. The City will send out the SSO list in an excel spreadsheet (John, Bill B could not find an email where you sent that already so please resend).

Attached please find the requested spreadsheet of the COH's SSO list from the period of January 1, 2012 through September 30, 2016. Also included are ArcGIS files which map the calls related to the SSO list. The shapefiles may contain some inaccuracies due to data conversion that may result in a different number of

points being on the map. This process is being refined currently and the attached shapefile is being sent as part of a request made at the last meeting between the EPA and the COH.

12. The City will submit draft language for new Paragraph 23.k – Chronic SSO Advanced Monitoring Program to replace current Paragraph 23.a.(6) using EPA's original language as much as possible.

As part of the discussion for drafting this language we have found a need for guidance from the EPA. In an effort to be effective in terms of compliance and cost we have tried to look at methodology of implementation. One matter we have discussed is in the monitoring of successive SSOs or dependents SSOs. Could these SSOs be monitored at a common flow point such as a common lift station? Also, the original language in the CD called for flow monitoring each SSO location. Can other equipment be considered such as high water sensors and head sensors. These devices are more easily implemented and cost effective than a flow monitoring system. The goal is to assess the potential cost to the City of implementing a program that would be acceptable under the CD.

In relation to the CAP, the COH is also requesting some clarification on implementation. In the CD the COH is required to manage a "banking" system for credits in relation to capacity assurance. When would projects be eligible for consideration in the "banking" system? In Appendix A the City has outlined projects that have been recently completed to improve the sewer collection and treatment system. If the City develops a methodology for crediting projects would we be able to bank credits retroactively for these documented projects. Also, would the Early Action Projects outlined in Appendix B be eligible? The goal here is to determine the value of the "bank" at the implementation of the program.

It would be advantageous if we could put together a conference call with the EPA to discuss some of these matters and bring this language to a close. Some of these issues are easier to explain verbally rather than in writing.

I hope that you find this helpful. Let me know if there are any other questions.

Thanks,

Shea E. McNease, P.E.
Project Engineer
shea@sd-w.com

sdw Engineering Progress

301 2nd Ave. | Hattiesburg, MS 39401 | (p) 601.544.1821 | (f) 601.544.0501 | sd-w.com

---

From: John Milner [mailto:jmilner@brunini.com]
Sent: Tuesday, May 02, 2017 4:36 PM
To: Shea McNease <Shea@sd-w.com>
Cc: John Milner <jmilner@brunini.com>
Subject: Revised draft response to Valerie for your review

Valerie,

Please see the following responses to your prior action item requests and the attached deliverables that are currently available:

1. The City has asked to submit a letter to EPA and MDEQ setting forth its request and justification for a payment plan for the penalty. If City wants to pursue this, send ASAP. It would be helpful to provide as much detail as

possible as to why the City feels this is necessary and the specific payment details regarding the number and timing of installments.

The City will provide a letter by May 17 which requests the a payment plan in four equal installments in the following four months over two fiscal years:

November, 2017
May, 2018
November, 2018
May, 2019

2. The City will consider voluntarily submitting the SORP and ERP earlier than the current deadline set forth in the CD.

   The City is in the process of preparing the SORP and ERP and is definitely considering the voluntary submission of the SORP and ERP earlier than the CD deadline.

3. DOJ has proofed Appendices A, B and C and raised one suggested edit/question re boring. City owes a response.

   See the attached revised Appendices A, B and C.

4. The City will revise maps C -1 to label a portion of sewer shed 36 and will revise C-2 to label a portion of sewer shed 44.

   See attached revised maps.

5. The City will correct the typo in paragraph 11 of Appendix A.

   See attached revised Appendix A.

6. The City will remove the dates under the title pages of Appendices A, B and C.

   See attached revised Appendices A, B and C.

7. The City will send out a complete set of Appendices A, B and C once these final changes are made.

   See attached revised Appendices A, B and C.

8. The EPA will send out a markup of Appendix E for the SEP.

   The City has reviewed the April 5 markup of the Appendix E for the SEP and has no changes to propose to the markup.

9. The City will contemplate a proposal for an appropriate deadline for SEP completion and schedule for escrow account deposits.

   This is will be provided by May 17.

10. The City will send out the SSO list in an excel spreadsheet (John, Bill B could not find an email where you sent that already so please resend).

    This will be sent to you, as well as additional documents, tomorrow (May 3) after a meeting in Hattiesburg with the City team.

11. The City will submit to the EPA and MDEQ a summary of its community engagement efforts to date.

    A summary will be provided by May 10,which will consist of the following meetings:

    East Jerusalem Neighborhood association 4/14/16
    Arcadia sunset neighborhood association meeting on 4/21/16
    Parkhaven neighborhood association meeting on 6/9/16
    Grace Christian Neighborhood on 8/11/16 at 6pm
    The Avenues Neighborhood Association on 8/22/16 at 6pm
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    Highland Neighborhood Association on 11/14/16 at 6 pm (Reggie was in attendance)

    Attached the power point presentation that was presented at these meetings.

12. The City will submit draft language for new Paragraph 23.k – Chronic SSO Advanced Monitoring Program to replace current Paragraph 23.a.(6) using EPA's original language as much as possible.

    The City team is meeting tomorrow and next week to address this issue and will submit proposed language for this provision by May 17.

13. The City will provide to DOJ the information for whom penalty payment instructions should be sent as set forth in Paragraph 26 of the CD.

    The City will provide these instructions by May 17.

Valerie, in addition to these action items, as I have mentioned to you and Bill earlier, the City is reviewing the Capacity Assurance Program provision of the CD, Paragraph 23.i (pp. 35 – 40) and will provide comments on issues related to this provision by May 17 after meetings tomorrow and next week.

If you have any questions concerning this message or the attachments, please feel free to contact me.

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

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From: John Milner
Sent: Tuesday, May 02, 2017 3:34 PM
To: 'Shea McNease'
Cc: John Milner
Subject: Draft response to Valerie for discussion

Below are action items: please follow up on those that are due from the City.

1. The City has asked to submit a letter to EPA and MDEQ setting forth its request and justification for a payment plan for the penalty. If City wants to pursue this, send ASAP. It would be helpful to provide as much detail as possible as to why the City feels this is necessary and the specific payment details regarding the number and timing of installments.

   Need to fill in the dates

2. The City will consider voluntarily submitting the SORP and ERP earlier than the current deadline set forth in the CD.

   The City is in the process of preparing the SORP and ERP and is definitely considering the voluntary submission of the SORP and ERP earlier than the CD deadline.

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   See the attached revised Appendices A, B and C.

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   See attached revised maps.

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   See attached revised Appendix A.

6. The City will remove the dates under the title pages of Appendices A, B and C.

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8. The EPA will send out a markup of Appendix E for the SEP.

   Shea, where do we stand on this?

9. The City will contemplate a proposal for an appropriate deadline for SEP completion and schedule for escrow account deposits.

   This is will be provided by May 10.

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    Shea, have you sent this to me?

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John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

Message

From: Elliott, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3312FCA56324A0A896ABEFAA0BBC981-ELLIOTT, RICHARD]
Sent: 5/4/2017 6:20:04 PM
To: Sayre, Dennis [Sayre.Dennis@epa.gov]
Subject: FW: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables
Attachments: 11217_Appendix C1.pdf; 11217_Appendix C2.pdf; 11217_Appendix C3.pdf; Appendix A Map.pdf; Appendix B Map.pdf; Appendix A Rev.pdf; Appendix B Rev.pdf; Appendix C Rev.pdf; Public Participation(Chinika)- Layout.pptx

FYI

Richard Elliott, P.E., PMP
Environmental Engineer

From: Bush, William
Sent: Wednesday, May 03, 2017 10:03 AM
To: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>; Fentress, Robert <Fentress.Robert@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Gretchen Zmitrovich <GZMITROVICH@mdeq.ms.gov>; Gretchen_Zmitrovich@deq.state.ms.us
Subject: FW: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

---

From: John Milner [mailto:jmilner@brunini.com]
Sent: Tuesday, May 02, 2017 6:22 PM
To: 'Mann, Valerie (ENRD)' <Valerie.Mann@usdoj.gov>
Cc: Bush, William <Bush.William@epa.gov>
Subject: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

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If you have any questions concerning this message or the attachments, please feel free to contact me. Thanks

John

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED STATES OF AMERICA and The STATE OF MISSISSIPPI, Plaintiffs, v. The CITY OF HATTIESBURG, MISSISSIPPI, Defendant.	)))))))))))	Case No. CONSENT DECREE

TABLE OF CONTENTS

[TOC \O "1-3"]

I. INTRODUCTION

A. WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (the "EPA"), has filed a complaint concurrently with this Consent Decree, alleging that Defendant, the City of Hattiesburg, Mississippi (the "City"), has violated and continues to violate Section 301 of the Clean Water Act ("CWA"), 33 U.S.C. § 1311, and terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") permits issued under Section 402 of the CWA, 33 U.S.C. § 1342; and seeking injunctive relief and civil penalties pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d);

B. WHEREAS, Plaintiff the State of Mississippi, acting through the Mississippi Commission on Environmental Quality and the Mississippi Department of Environmental Quality ("MDEQ") (collectively, the "State"), joined in the Complaint and seeks injunctive relief and civil penalties for the City's alleged violations of the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1, *et seq.* ("MAWPCL");

C. WHEREAS, the State is also a Plaintiff in this action and is joined as a party under Section 309(e) of the CWA, 33 U.S.C. § 1319(e), which requires the state in which a municipality is located to be joined as a party whenever the municipality is a party to a civil action brought by the United States under Section 309 of the CWA;

D. WHEREAS, the State has been authorized by the EPA to administer the NPDES program in Mississippi pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b);

E. WHEREAS, the City is a "municipality" pursuant to Section 502 of the CWA, 33 U.S.C. § 1362;

F. WHEREAS, the City's Wastewater Collection and Transmission System ("WCTS") transports wastewater to the City's two wastewater treatment plants, the Hattiesburg South Wastewater Treatment Plant ("South Lagoon") and the Hattiesburg North Wastewater Treatment Plant ("North Lagoon");

G. WHEREAS, the South Lagoon and its related WCTS are regulated pursuant to NPDES Permit number MS0020303, and the North Lagoon and its related WCTS are regulated pursuant to NPDES Permit number MS0020826;

H. WHEREAS, the Mississippi Commission on Environmental Quality and the City have entered into Agreed Order No. 6034 11, dated October 5, 2011, as amended on February 13, 2012, August 12, 2014, and December 7, 2016, regarding the compliance issue of wastewater discharges from the South Lagoon and the North Lagoon under the NPDES Permits referenced in Paragraph G above;

I. WHEREAS, the EPA and the State have determined, based upon information provided

by the City, that the City has had hundreds of unauthorized Sanitary Sewer Overflows ("SSOs") since January 1, 2012;

J. WHEREAS, the City represents that based on previous investigations, including those conducted pursuant to the City's Comprehensive Sewer and Water Improvements Project ("COMSWIP"), the City identified and completed within the past several years certain sanitary sewer projects costing approximately $16.95 million including several projects to address conditions that caused SSOs in the WCTS. Such completed sanitary sewer projects are more particularly described and depicted on a map as set forth on Appendix A, attached hereto and incorporated herein;

K. WHEREAS, the EPA and the State have determined that the City has no effective system of SSO reporting or record-keeping, and has thus failed to comply with the reporting requirements of its NPDES Permits;

L. WHEREAS, the United States and the State contend that these SSOs and reporting failures are violations of the CWA, MAWPCL, and the City's NPDES Permits;

M. WHEREAS, the City does not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint;

N. 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 between the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section [REF _Ref322450365 \r \h * MERGEFORMAT]I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. This Court has supplemental jurisdiction over the state law claims asserted by the State pursuant to 28 U.S.C. § 1367. 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) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and the City conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, the City consents to the Court's jurisdiction over this Decree, over any such action, and over the City and consents to venue in this judicial district.

2. For purposes of this Consent Decree, the City agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), and Miss. Code Ann. § 49-17-29 and § 49-17-43.

III. APPLICABILITY

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

4. No transfer of ownership or operation of any portion of the Sewer System, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of the Decree are implemented. At least thirty (30) Days prior to such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States and MDEQ, in accordance with Section [REF _Ref322450400 \r \h * MERGEFORMAT] (Notices). Any attempt to transfer ownership or operation of the Sewer System without complying with this Paragraph constitutes a violation of this Decree.

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

6. In any action to enforce this Consent Decree, the City 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.

IV. OBJECTIVES

7. All plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing the City to achieve and maintain full compliance with the CWA and the MAWPCL, including the goal of eliminating all Sanitary Sewer Overflows.

V. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA (including, without limitation, those terms defined in Section 502 of the CWA, 33 U.S.C § 1362, and at 40 C.F.R. § 122.2) shall have the meanings assigned to

them in the CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Building Backup" shall mean a wastewater release or backup into a building that is caused by blockages, flow conditions, or other malfunctions in the Wastewater Collection and Transmission System. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a portion of a Private Lateral located on private property outside of the City's right-of-way or easement is not a Building Backup.

b. "Calendar Quarter" shall mean the three (3)-month periods ending on March 31, June 30, September 30, and December 31.

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

d. "Certification" or "certify" when used in this Consent Decree shall require the City to comply with Paragraph [REF _Ref387046011 \w \h] of this Consent Decree.

e. "The City" or "Defendant" shall mean the City of Hattiesburg, Mississippi, a municipal corporation, including all of its departments, agencies, instrumentalities such as the Water and Sewer Department, and any successor thereto.

f. "CMOM" or "Capacity, Management, Operations, and Maintenance" shall mean a program of accepted industry practices to properly manage, operate and maintain sanitary wastewater collection, transmission and treatment systems, investigate capacity-constrained areas of these systems, and respond to SSO events.

g. "Complaint" shall mean the complaint filed by the United States and the State in this action.

h. "COMSWIP" shall mean the City's Comprehensive Sewer and Water Improvements Project.

i. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section [REF _Ref322450534 \r \h * MERGEFORMAT]). In the event of a conflict between this document and any appendix, this document shall control.

j. "CWA" shall mean the Clean Water Act, as amended, 33 U.S.C. §§ 1251, *et seq.*

k. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Southern District of Mississippi.

l. "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.

m. "Deliverable" shall mean any written document required to be prepared and/or submitted by or on behalf of the City pursuant to this Consent Decree.

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

o. "Effective Date" shall have the definition provided in Section [REF _Ref322450432 \r \h * MERGEFORMAT].

p. "Excessive Infiltration/Inflow" or "Excessive I/I" shall have the meaning provided in 40 C.F.R. § 35.2005(b)(16).

q. "Force Main" shall mean any pipe which is owned or operated by the City 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 Line" or "Gravity Sewer" shall mean any pipe which is owned and operated by the City that receives, contains and conveys wastewater not normally under pressure, but is 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.

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 waters, surface runoff, street wash waters, or drainage.

u. "I/I" shall mean the total quantity of water from Infiltration, Inflow, and rainfall dependent Infiltration and Inflow without distinguishing the source.

v. "MAWPCL" shall mean the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq.*

w. "Major Gravity Line" shall mean any of the following:

(1) all Gravity Sewer Lines that are twelve (12) inches in diameter or larger;

(2) all Gravity Sewer Lines that convey wastewater from one pumping station service area to another pumping station service area; and

(3) all Gravity Sewer Lines that have caused or contributed, or that the City knows will likely cause or contribute to capacity-related SSOs.

x. "Month" shall mean one (1) calendar month running from the numbered day to the same numbered day of the following calendar month, regardless of whether the particular month has 28, 29, 30 or 31 days. In the event a triggered event would occur on a day of the month which does not exist (for example, on February 30), then the event shall be due on the first day of the following month (for example, March 1).

y. "MDEQ" shall mean the Mississippi Department of Environmental Quality and the Mississippi Commission on Environmental Quality, collectively, and any successor departments or agencies of the State.

z. "NPDES" shall mean the National Pollutant Discharge Elimination System authorized under Section 402 of the CWA, 33 U.S.C. § 1342.

aa. "NPDES Permits" shall mean NPDES permit No. MS0020303 issued to the City pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the South Lagoon, and NPDES permit No. MS0020826 issued to the City pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the North Lagoon, and any future extended, modified, or reissued permits.

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

cc. "Parties" shall mean the United States of America on behalf of the EPA, the State acting through MDEQ, and the City.

dd. "Plaintiffs" shall mean the United States of America on behalf of the EPA, and the State acting through MDEQ.

ee. "Private Lateral" shall mean that portion of a sanitary sewer conveyance pipe that extends from the wastewater main to the single-family, multi-family, apartment, or other dwelling unit or commercial or industrial structure to which wastewater service is or has been provided.

ff. "Prohibited Bypass" shall mean the intentional diversion of waste streams from any portion of a treatment facility which is prohibited pursuant to the terms set forth

at 40 C.F.R. § 122.41(m).

gg. "Public Document Repository" or "PDR" shall mean the Office of the City Clerk located at Hattiesburg City Hall, 200 Forrest Street, Hattiesburg, Mississippi, 39401 and the City's website, www.hattiesburgms.com.

hh. "Pump Station" shall mean facilities which are owned or operated by the City 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 pump station.

ii. "Sanitary Sewer Overflow" or "SSO" shall mean any discharge of wastewater to waters of the United States or the State from the City's Sewer System through a point source not specified in any NPDES permit, as well as any overflow, spill, or release of wastewater to public or private property from the Sewer System that may not have reached waters of the United States or the State, including all Building Backups.

jj. "SCADA" shall mean supervisory control and data acquisition.

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

ll. "Sewershed" shall mean the subdivisions of the City's WCTS containing sewers that are primarily hydraulically linked.

mm. "Sewer System" shall mean the WCTS and the WWTPs.

nn. "State" shall mean the State of Mississippi, including all of its departments, agencies, and instrumentalities.

oo. "Timely" when applied to the submittal of a Deliverable shall mean submitted no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and containing all of the elements pertaining to the submittal as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree). "Timely" when applied to the implementation of any Work shall mean implemented no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and in accordance with the elements pertaining to such Work as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree).

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

qq. "Wastewater Collection and Transmission System" or "WCTS" shall mean the municipal wastewater collection, retention and transmission system, including

all pipes, Force Mains, Gravity Sewer Lines, Pump Stations, pumps, manholes, and appurtenances thereto, which are owned or operated by the City.

rr. "Wastewater Treatment Plants" or "WWTPs" 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 include all facilities owned, managed, operated, and maintained by the City, including but not limited to the South Lagoon and the North Lagoon, and all components of such sewage treatment plants.

ss. "Work" shall mean all activities the City is required to perform under this Consent Decree.

VI. REVIEW OF DELIVERABLES/CERTIFICATION OF DELIVERABLES

9. Public Document Repository/ Public Review Requirement. The City shall post on its website instructions for how the public can request email notices of future Deliverables. Prior to the submission of each Deliverable to the EPA and MDEQ, the City shall post a copy of the Deliverable in its PDR and provide notice of such action by email to all parties who have requested such notice. The City shall also send to the PDR, prior to the submission of each Deliverable to the EPA and MDEQ, a memorandum containing a brief synopsis of the Deliverable and instructions on how to find the Deliverable on the City's website. The City shall post on its website instructions for submitting comments, and shall allow the public a period of thirty (30) Days to comment on, the following Deliverables: (i) the Priority Areas Evaluation Report/Rehabilitation Plan required under Paragraph 21; (ii) the Sewer Overflow Response Plan required under Paragraph 23.a.; (iii) the Emergency Response Plan required under Paragraph 23.b.; the Fats, Oils and Grease Control Program required under Paragraph 23.h.; and the Capacity Assurance Program required under Paragraph 23.i. After the thirty (30)-Day comment period, the City shall consider public comments for a period of at least fifteen (15) Days before submitting the Deliverable to the EPA and MDEQ. Within seven (7) Days after submitting a Deliverable to the EPA and MDEQ, the City shall place a copy of the submitted version of the Deliverable in its PDR. Within seven (7) Days after the EPA's approval, approval contingent upon conditions, or modification by the EPA, the City shall place a copy of such final version of the Deliverable in its PDR. The City shall maintain in its PDR until termination of this Consent Decree all written comments received from the EPA and MDEQ along with all submitted versions of Deliverables.

10. Copy to MDEQ. The City shall provide a copy of any Deliverable to MDEQ at the same time such Deliverable is due to the EPA.

11. EPA Action on Deliverables. After review of any Deliverable that is required to be submitted pursuant to this Consent Decree, the EPA, after consultation with MDEQ, shall in writing:

a. approve the submission;

b. approve the submission upon specified conditions;

c. approve part of the submission and disapprove the remainder; or

d. disapprove the submission.

12. Approved Deliverables. If a Deliverable is approved by the EPA pursuant to Paragraph [REF _Ref383526396 \r \h * MERGEFORMAT], the City shall take all actions required by the Deliverable in accordance with the schedules and requirements of the Deliverable as approved. If the Deliverable is conditionally approved or approved only in part, pursuant to Paragraph [REF _Ref383526325 \r \h * MERGEFORMAT] or [REF _Ref383524967 \r \h * MERGEFORMAT], the City shall, upon written direction from the EPA, after consultation with MDEQ, take all actions required by the approved plan, report, or other item that the EPA, after consultation with MDEQ, determines are technically severable from any disapproved portions, subject to the City's right to dispute only the specified conditions or the disapproved portions, under Section [REF _Ref442169774 \w \h] of this Consent Decree (Dispute Resolution). Following the EPA approval of any Deliverable or portion thereof, such Deliverable or portion thereof so approved shall be incorporated into and become enforceable under this Consent Decree.

13. Disapproved Deliverables. If the submission is disapproved in whole or in part pursuant to Paragraph [REF _Ref383524967 \r \h * MERGEFORMAT] or [REF _Ref383524994 \r \h * MERGEFORMAT], the City shall, within thirty (30) Days or such other time as the EPA and the City agree to in writing, correct all deficiencies and resubmit to the EPA the Deliverable, or disapproved portion thereof, for approval, in accordance with Paragraphs [REF _Ref383525115 \r \h * MERGEFORMAT] and [REF _Ref383525135 \r \h * MERGEFORMAT]. If the resubmission is approved in whole or in part, the City shall proceed in accordance with Paragraph [REF _Ref383525135 \r \h * MERGEFORMAT].

14. Stipulated Penalties Accruing. Any stipulated penalties applicable to the original Deliverable, as provided in Section [REF _Ref442169823 \w \h] of this Decree, shall accrue during the thirty (30)-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the City's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

15. Resubmitted Deliverable. If a resubmitted Deliverable, or portion thereof, is disapproved in whole or in part, the EPA, after consultation with MDEQ, may again require the City to correct any deficiencies, in accordance with preceding Paragraph [REF _Ref383526531 \r \h * MERGEFORMAT], or may itself correct any deficiencies, subject to the City's right to invoke Dispute Resolution and the right of the EPA to seek stipulated penalties as provided in

preceding Paragraph [REF _Ref383526273 \r \h * MERGEFORMAT]. Upon the EPA's correction of any deficiencies, such resubmitted plan, report, or other item, or portion thereof will be incorporated into and become enforceable under this Consent Decree and shall be implemented by the City according to the approved schedule, subject to the City's right to invoke Dispute Resolution pursuant to Section [REF _Ref383525264 \r \h * MERGEFORMAT].

16. Timing of Review of Deliverables. If the EPA issues written comments and decisions on any Deliverable more than ninety (90) Days after receipt of such submission, any subsequent deadline or milestone that is dependent upon such comments or decisions shall be extended. The length of the extension shall be determined by calculating the number of Days between the EPA's receipt of the submission and the date of the EPA's written response, less ninety (90) Days. Within thirty (30) Days of the date that the City knows or should know of a deadline or milestone that the City believes is extended under this Paragraph, the City shall inform the EPA, in writing, of its belief and the amount of time the City believes the deadlines or milestones are extended. If the EPA disagrees with the City's determination that a deadline is dependent upon such comments or decisions, the EPA shall inform the City in writing. The City may dispute the EPA's conclusion regarding whether a deadline is dependent upon such comments or decisions pursuant to Section [REF _Ref387667850 \w \h] of this Consent Decree (Dispute Resolution).

17. Certification. In all Deliverables, notices, documents or reports submitted to the United States and State pursuant to this Consent Decree, the City shall, by a senior City management official, sign and certify such notices, documents and reports as follows:

> *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

VII. COMPLIANCE REQUIREMENTS

18. Obligation to Perform Work. No later than the Effective Date, the City shall begin to implement the Work pursuant to this Consent Decree. All Work identified in this Section [REF _Ref442169872 \w \h] shall be completed no later than one hundred ninety-six (196) Months after the Effective Date. All Work shall be performed using sound engineering practices to ensure that construction, management, operation and maintenance of the Sewer System complies with the CWA, including practices to improve the resilience of the Sewer System to the impacts of climate change. Sound engineering practices may include, but are not limited to, appropriate provisions of the *Handbook: Sewer System Infrastructure Analysis and*

Rehabilitation, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 2009~~10~~; EPA's guidance: *Computer Tools for Sanitary Sewer System Capacity Analysis and Planning*, EPA/600/R-07/111, October 2007; the most current edition of MDEQ's *Guidance for the Design of Publicly Owned Wastewater Facilities*; EPA's ~~*Climate Ready Creating Resilient*~~ *Water Utilities (CRWU) Initiative*, found at https://www.epa.gov/crwu ~~referenced at EPA 817-F-12-005, 2012~~; and EPA's *Climate Resilience Evaluation and Awareness Tool Version 3.0* (CREAT 3.0), referenced at EPA 815-B-16-004, May 2016 and currently at [HYPERLINK "https://www.epa.gov/crwu/build-climate-resilience-your-utility"]; and the Pump Stations evaluations shall be consistent with the *Pumping Systems* chapter of the most current version of Water Environment Federation's *Manual of Practice FD-4, Design of Wastewater and Stormwater Pumping Stations.*

19. Early Action Projects. Based on previous investigations conducted pursuant to the City's COMSWIP, the City has identified certain rehabilitation and other projects that are intended to address conditions currently causing SSOs in the WCTS and other violations alleged in the Complaint which shall be referred to as "Early Action Projects." The Early Action Projects are set forth and described on Appendix B, attached hereto and incorporated herein. The City represents that the Early Action Projects will constitute approximately three percent (3%) of the WCTS by linear foot, will contribute to the improvement of 15 SSOs, and are estimated to cost approximately $5.2 million. The City shall complete each of these Early Action Projects in accordance with the deadlines set forth in Appendix B which do not extend past December 31, 2020. Any change to this list of projects or deadlines approved by the EPA shall not constitute a material modification to this Consent Decree as set forth in Section [REF _Ref386810247 \w \h * MERGEFORMAT] (Modifications) below.

20. Sanitary Sewer Evaluation/Rehabilitation ("SSER") Work Plan. Within nine (9) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a SSER Work Plan that provides for the continual assessment, analysis, and rehabilitation of the WCTS infrastructure to, among other things, address I/I, structural defects, and the other conditions causing, or that are likely to cause, SSOs. The SSER Work Plan shall establish procedures for setting priorities and expeditious schedules for undertaking the WCTS assessment and rehabilitation components set forth in Paragraphs [REF _Ref387045135 \w \h * MERGEFORMAT] through [REF _Ref387045172 \w \h * MERGEFORMAT], below. The City shall develop these priorities and expeditious schedules taking into consideration the nature and extent of customer complaints; flow monitoring, including flow isolation studies; location and cause of SSOs; any remedial measures already undertaken; field crew work orders; any preliminary sewer assessments; locations closer to the Leaf and Bouie Rivers; and any other relevant information. In addition, areas near surface waters that have been included on MDEQ's CWA Section 303(d) list of impaired waters for pathogens shall also receive priority by the City. Finally, the City shall also consider areas that have been identified by the EPA as potentially having environmental justice issues (minority and/or low income neighborhoods) when developing the priorities. The SSER Work Plan shall also include performance goals for each of the components of the SSER Work Plan set forth below, and procedures for analysis of the

effectiveness of completed rehabilitation. The SSER Work Plan shall include the following components:

a. Corrosion Defect Identification. The Corrosion Defect Identification component of the SSER Work Plan shall establish standard procedures for inspecting and identifying WCTS infrastructure that is either corroded or at risk of corrosion. The Corrosion Defect Identification component shall include a system for prioritizing repair of existing corrosion defects, corrosion identification forms, and procedures for a corrosion defect analysis.

b. Manhole Condition Assessment and Rehabilitation. The Manhole Condition Assessment and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the condition assessment of manholes within the WCTS. This component shall include manhole inspection forms and procedures for a manhole defect analysis. This component shall also establish a process for setting manhole rehabilitation priorities and expeditious schedules; shall establish an ongoing inventory of manhole rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

c. Flow Monitoring. The Flow Monitoring component of the SSER Work Plan shall establish procedures for initiating routine flow monitoring during dry and wet weather to support engineering analyses related to Sewer System capacity and peak flow studies. Dry weather monitoring shall be carried out so as to allow the characterization of base flows and I/I rates within the WCTS. Wet weather monitoring shall be conducted periodically during events of sufficient duration and intensity that cause significant I/I into the WCTS. The procedures shall identify the process used to establish flow monitoring locations, appropriate flow monitoring techniques, sewer cleaning associated with flow monitoring and a procedure for rainfall measurement.

d. Capacity Assessment. The Capacity Assessment component of the SSER Work Plan shall establish procedures and methodologies for assessing the wet weather capacity of the WCTS. This assessment shall include engineering analyses of the WCTS capacity derived from, but not limited to, flow monitoring data, remote monitoring equipment installed in the WCTS to monitor sewer pipe surcharge, and hydraulic modeling results where applicable. This assessment shall identify those portions of the WCTS that are expected to cause or contribute to SSOs under existing and projected average and peak flows in dry and wet weather, and the degree to which those portions of the WCTS experience or cause SSOs under current or projected future conditions.

e. Closed Circuit Television ("CCTV") Inspection. The CCTV inspection component of the SSER Work Plan shall establish standard procedures for CCTV inspection within the WCTS to support sewer assessment and rehabilitation activities, and shall include procedures for CCTV cleaning and a process for the retention and

retrieval of CCTV inspection data.

f. Gravity Sewer Line Defect Analysis and Rehabilitation. The Gravity Sewer Line Defect Analysis component of the SSER Work Plan shall establish standard procedures for analysis of Gravity Sewer Line defects within the WCTS which may vary depending on the size of the pipe. Such procedures shall include Private Lateral investigations to identify sources of I/I to the WCTS. The Gravity Sewer Line Defect Analysis component shall establish standard defect codes, defect identification procedures and guidelines, and a standardized process for cataloging Gravity Sewer Line defects. This component shall also establish a process for setting Gravity Sewer Line rehabilitation priorities; shall establish an ongoing inventory of Gravity Sewer Line rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

g. Smoke Testing. The Smoke Testing component of the SSER Work Plan shall establish standard procedures for smoke testing of the Gravity Sewer Lines within the WCTS to identify sources of I/I, including cross connections and other unauthorized connections. Such procedures shall include Private Lateral investigations to identify sources of I/I.

h. Force Main Condition Assessment and Rehabilitation. The Force Main Condition Assessment and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the condition assessment of Force Mains within the WCTS. This component shall include inspection forms and procedures for a Force Main defect analysis. This component shall also establish a process for setting Force Main rehabilitation priorities; shall establish an ongoing inventory of Force Main rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

i. Pump Station Performance and Rehabilitation. The Pump Station Performance and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the evaluation of Pump Station performance and Pump Station adequacy within the WCTS. The Pump Station Performance and Rehabilitation component shall include:

(1) The use of pump run time meters; pump start counters; computation of Nominal Average Pump Operating Time ("NAPOT"); root cause failure analysis protocols; and appropriate remote sensing such as SCADA;

(2) The evaluation of station capacity, as described in the *Pumping Systems* chapter of the most current version of WEF's Manual of Practice FD-4, *Design of Wastewater and Stormwater Pumping Stations*;

(3) The evaluation of critical response time, defined as the time interval between activation of the high wet well level alarm and the first (1st) SSO, under peak flow conditions;

(4) The evaluation of station conditions, based upon both physical inspection and recent operating and mechanical failure history during at least the past five (5) years;

(5) The evaluation of station design and equipment, including redundancy of pumps and electrical power supply, and other equipment installed, based upon Chapter 40, *Wastewater Pumping Stations* of the most recent edition of *Recommended Standards for Wastewater Facilities* by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (commonly known as the "Ten State Standards");

(6) The evaluation of the ability of maintenance personnel to take corrective action within the critical response time calculated for each Pump Station; and

(7) A process for setting Pump Station rehabilitation priorities and expeditious schedules and an ongoing inventory of Pump Station rehabilitation, including identification of the rehabilitation techniques to be used, and an analysis of the effectiveness of completed rehabilitation.

21. Priority Areas Evaluation Report/Rehabilitation Plan. For purposes of implementing the SSER Work Plan under this Consent Decree, the City has already prioritized certain Sewersheds within the WCTS into two (2) Priority Areas for sewer assessment and rehabilitation work pursuant to the SSER Work Plan under this Consent Decree. This prioritization was based on existing information including the location and frequency of past SSOs and the other criteria set forth in Paragraph 20 above. These two (2) "Priority Areas" are shown on the maps in Appendix C, attached hereto and incorporated herein. The Priority Areas represent approximately forty-three percent (43%) of the WCTS by linear foot. The City shall complete the assessment of Priority Area 1 pursuant to the SSER Work Plan on or before thirty-two (32) Months after the Effective Date. The City shall complete the assessment of Priority Area 2 pursuant to the SSER Work Plan on or before forty-five (45) Months after the Effective Date. Within three (3) Months after completion of the assessment of a Priority Area as set forth above pursuant to the SSER Work Plan, the City shall submit to the EPA for review and approval a Priority Area Evaluation Report/Rehabilitation Plan setting forth the results of the assessment for that Priority Area and proposed rehabilitative and corrective actions and schedules in order to meet objectives of this Consent Decree. Upon approval by the EPA, the City shall implement the remedial measures in the approved Rehabilitation Plan portion of this submittal in accordance with the schedule contained therein.

a. Priority Area Evaluation Report. The Priority Area Evaluation Report portion of this submittal shall include, at a minimum, the following:

(1) A thorough analysis of historical and current flow monitoring, inspection, rainfall and other data, including data collected during the evaluation of the Priority Area;

(2) Identification of areas with Excessive I/I, such that these conditions are causing and/or contributing to SSOs and/or Prohibited Bypasses at a WWTP;

(3) Identification of sources of I/I within the Priority Area, if identifiable, by manhole/line segment, street address, type (Infiltration or Inflow), source (e.g., "wall leakage"), and estimated flow from the source;

(4) Identification of cross-connections between the WCTS and the City's municipal separate storm sewer system;

(5) Identification and quantification of SSOs, including all potential SSOs identified pursuant to implementation of the SSER Work Plan;

(6) A summary of activities undertaken to configure the Hydraulic Model for the Priority Area and certification that the Hydraulic Model is capable of performing those functions identified in Paragraph [REF _Ref387045491 \w \h * MERGEFORMAT], below;

(7) A summary of activities undertaken to calibrate the Hydraulic Model and certification that the Hydraulic Model has been calibrated (including the performance of sensitivity analyses) and verified using actual system data (e.g., flow data) from permanent and temporary sewage flow monitoring points in the WCTS (this certification shall include a description of the methodology, data collected, and results of the Hydraulic Model calibrations and verifications);

(8) Identification of portions of the WCTS within the Priority Area in which physical degradation is causing or contributing to SSOs;

(9) Results of average and peak daily dry and wet weather flow measurements;

(10) A determination of maximum Infiltration rate during periods of

high ground water (in gpd/inch diameter-mile);

(11) A determination of maximum hourly Inflow rate during wet weather for various storm durations and intensities (in gpd/inch diameter-mile);

(12) A determination of peaking factors for the Priority Area (the ratio of measured peak flow to average dry weather flow as measured through the duration of the evaluation);

(13) A summary of flow monitoring activities, to include, at a minimum, a map showing the location and type of each flow meter, problems encountered and deviations from the SSER Work Plan, and a description of flow monitor calibration activities, including any scatter graphs and calibration and verification graphs;

(14) A summary of field investigative activities performed to include, at a minimum: type of activity; number of activities performed (e.g., "100 out of 500 manholes inspected"), observations made under each activity (inspection procedure), and summaries of the results;

(15) A summary of the structural defects identified in the WCTS in the Priority Area to include, at a minimum: number of each type of defect by line segment, manhole number or street address, and estimates of peak flow or impact on WCTS capacity (as appropriate) from defects in each line segment, based on a consistently applied set of stated criteria as set forth in the SSER Work Plan;

(16) A summary of the technical approach utilized in carrying out the capacity assessment analyses outlined in Paragraph [REF _Ref479061436 \w \h] above;

(17) A detailed description of any deviations from the capacity assessment outlined in Paragraph [REF _Ref479061436 \w \h] above, including a discussion of the reasons for such deviation;

(18) Identification of all portions of the WCTS within the Priority Area with insufficient capacity (pursuant to Paragraph [REF _Ref479061436 \w \h] above and as identified by the Hydraulic Model of a Major Gravity Line, Pump Station or other structure) to convey peak flows without experiencing surcharge sufficient to cause a SSO under either projected peak flows or projected average

conditions or both;

(19) A description of future projected flows;

(20) Information on the predicted (e.g. Manning equation) and actual peak flow capacity of all Major Gravity Lines (by segment), all Force Mains, siphons, and Pump Stations;

(21) Summaries of the number and footage of sewer segments surcharged, and the number of structures at which a SSO might be expected to occur under each condition investigated;

(22) Mapping for each condition investigated, illustrating each pipe segment operating in surcharge, and each manhole or structure at which a SSO might be expected to occur;

(23) Information regarding the Pump Station evaluation as required by Paragraph [REF _Ref387045172 \w \h * MERGEFORMAT] above;

(24) The results of the capacity assessment as required by Paragraph [REF _Ref479061436 \w \h] above; and

(25) A summary of any capital projects implemented since commencement of the SSER Work Plan.

b. Rehabilitation Plan. The Rehabilitation Plan portion of this submittal shall include, at a minimum, the following:

(1) Identification of specific measures and schedules that, when implemented, will result in adequate capacity in the WCTS within the Priority Area to collect, convey and treat anticipated peak flows, without SSOs or Prohibited Bypasses at a WWTP;

(2) Identification of the degree to which sources of Excessive I/I shall be removed, and the degree to which Excessive I/I removal is expected to alleviate capacity constraints, and propose specific remedial measures and schedules that will address those capacity limitations not expected to be addressed by Excessive I/I removal (anticipated I/I removal rates used in the development of the Rehabilitation Plan shall reflect current industry practice);

(3) Identification of specific remedial measures and schedules to address capacity limitations that may also include increases in Pump Station and sewer line capacity, construction of storage or

equalization basin facilities, or increases in WWTP capacity;

(4) Identification of all measures and schedules necessary to eliminate all cross-connections between the WCTS and the City's municipal separate storm sewer system;

(5) Identification of all measures and schedules necessary to eliminate all SSOs caused by physical degradation of sewers, inadequate Pump Station capacities, or inadequate Pump Station reliability;

(6) Prioritized schedules for remedial measures based upon likely relative human health and environmental impact risks, SSO frequencies, and SSO volumes;

(7) A description of the methodology used to apply the prioritization factors in Paragraph [REF _Ref387217846 \w \h * MERGEFORMAT] above;

(8) Estimated capital, operations and maintenance, and present value costs for each identified remedial measure in consistent, year-specific dollars;

(9) Identification of the dates for preliminary design, complete design, complete permitting, contract award, construction commencement, and construction completion dates for each measure proposed; and

(10) An expeditious schedule such that design, construction, and placement in service of all proposed measures shall be completed within one hundred fifty-six (156) Months after the Effective Date of this Consent Decree for Priority Area 1; and within one hundred ninety-two (192) Months after the Effective Date of this Consent Decree for Priority Area 2.

22. Priority Areas Rehabilitation Report. Within four (4) Months after completion of all remedial measures set forth in a Rehabilitation Plan for a particular Priority Area, the City shall submit to the EPA for review and approval a Rehabilitation Report summarizing the implementation of the Rehabilitation Plan. Such summary shall include, at a minimum, the following:

a. Identification of specific measures taken to achieve, and an analysis of whether such measures resulted in, adequate capacity in the WCTS within the Priority Area to collect and convey and treat anticipated peak flows, without SSOs or Prohibited Bypasses at a WWTP;

b. An analysis of the degree to which sources of Excessive I/I were removed,

and the degree to which Excessive I/I removal alleviated capacity constraints; and

c. Identification of all measures taken to eliminate, and an analysis of whether such measures resulted in the elimination of, all cross-connections and SSOs caused by physical degradation of sewers, inadequate Pump Station capacities, or inadequate Pump Station reliability.

23. Capacity, Management, Operations and Maintenance Programs. The City shall develop and implement the Capacity, Management, Operations and Maintenance ("CMOM") programs as provided below. All CMOM programs shall be developed in accordance with EPA Region 4 CMOM guidance, attached hereto and incorporated herein as Appendix D. The City shall ensure that each CMOM program has a written, defined purpose; a written, defined goal; is documented in writing with specific detail; is implemented by trained personnel; has established performance measures; and has written procedures for periodic review. The Parties recognize that the City may need or want to revise the CMOM Programs set forth below during the term of this Consent Decree. Such revisions shall not be considered modifications to the Consent Decree for purposes of Section [REF _Ref387059130 \w \h * MERGEFORMAT] (Modification). The City must obtain the EPA's prior written approval of any revision to the substance of any CMOM Program required by this Consent Decree and shall place copies of any such revised Program in the PDR in accordance with the provisions of Section [REF _Ref387059293 \w \h * MERGEFORMAT]. The City may make non-substantive changes to any CMOM Program required by this Consent Decree without the EPA's approval and shall provide a copy of any revised Program to the EPA and MDEQ, and place a copy of any such revised Program in the PDR within seven (7) Days after making such revision.

a. Sewer Overflow Response Plan ("SORP"). Within three (3) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a SORP that will establish timely and effective methods and means of responding to, cleaning up, and/or minimizing the impact of SSOs; timely reporting of the location, volume, cause, impact, and other pertinent SSO information to the appropriate regulatory agencies; and timely and effective notification of SSOs to potentially impacted public. At minimum, the SORP shall include and provide for the following:

(1) Within twenty-four (24) hours of the time the City first becomes aware of a SSO to waters of the United States or the State or of a SSO that will endanger public health or the environment, the City shall provide in an oral report to MDEQ the location of the SSO by street address or any other appropriate method (e.g., latitude-longitude). The oral report shall be given to MDEQ through calling (601) 961-5682.

(2) Within five (5) days of the time the City first becomes aware of a SSO to waters of the United States or the State or of a SSO that

will endanger public health or the environment, the City shall also provide a written report to MDEQ for the SSO. The City shall maintain a copy of any written reports prepared pursuant to this Paragraph for a period of not less than five (5) years from the date of the SSO. The written report shall contain the following:

(a) The location of the SSO by street address, or any other appropriate method (e.g., latitude-longitude);

(b) The estimated date and time when the SSO began and stopped, or if it is still an active SSO, the anticipated time to stop the SSO;

(c) The steps taken to respond to the SSO;

(d) The name of the receiving water, if applicable;

(e) An estimate of the volume (in gallons) of sewage spilled;

(f) A description of the WCTS component from which the SSO was released (such as manhole, crack in pipe, Pump Station wet well or constructed overflow pipe);

(g) Subject to available information, an estimate of the SSO's impact on public health and to water quality in the receiving water body;

(h) The cause or suspected cause of the SSO;

(i) The date of the last SSO at the same point;

(j) The steps taken or to be taken to reduce, prevent, or eliminate, reoccurrence of the SSO;

(k) A list of all notifications to the public and other agencies or departments; and

(l) The steps taken or to be taken to clean up any surfaces that have been in contact and/or contaminated by the SSO.

(3) Procedures for documenting and reporting SSOs based on demonstrable evidence that a SSO occurred regardless of whether City personnel directly witnessed the SSO occurring.

(4) The City shall maintain for all SSOs for a period of not less than five (5) years from the date of the SSO all records documenting the steps that have been and will be taken to prevent the SSO from recurring, including work order records associated with investigation and repair activities related to the SSO. The City shall also maintain for a period of not less than five (5) years from the date of the SSO a list and description of complaints from customers or others regarding the SSO.

(5) The SORP shall provide procedures for responding to all SSOs to minimize the environmental impact and potential human health risk of SSOs. At a minimum, such response procedures shall include:

(a) A detailed description of the actions the City will undertake to immediately provide notice to the public when appropriate (through the local news media or other means including signs or barricades to restrict access) of a SSO;

(b) A detailed description of the actions the City will undertake to provide notice to appropriate federal, state or local agencies/authorities;

(c) A detailed plan (including the development of response standard operating procedures) to minimize the volume of untreated wastewater transmitted to the portion of the WCTS impacted by the events precipitating the SSO to minimize overflow volumes;

(d) A particular description of the City's response to Building Backups, including the timeframe for responses and the measures to be taken to clean up Building Backups found to be caused by conditions in the City's Sewer System, including procedures necessary to disinfect and/or remove items potentially contaminated by Building Backups such as 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 and other appropriate measures to disinfect and/or remove items potentially contaminated by Building Backups; and a description of the City's follow-up process to ensure adequacy of cleanup;

(e) A detailed plan of the resources to be used to correct or repair the condition causing or contributing to the SSO;

(f) A detailed plan to ensure the preparedness, including response training of City employees and personnel of other affected agencies, necessary for the effective implementation of the SORP in the event of a SSO and establishing procedures and providing adequate training to response personnel for estimating SSO volumes;

(g) A list of those SSO locations within the area of the WCTS served by each Pump Station that have been recorded as overflowing more than once within the previous twelve (12) month period and/or those locations at which a SSO is likely to occur first in the event of a Pump Station failure; and

(h) Pump Station emergency bypass/pump-around strategies, and procedures.

b. Emergency Response Plan. Within three (3) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval an Emergency Response Plan. The Plan shall address both routine and catastrophic emergencies. Routine emergencies include such situations as overflowing manholes, line breaks, localized electrical failure and Pump Station outages. Catastrophic emergencies include floods, tornados, earthquakes or other natural events, serious chemical spills and widespread electrical failure. The Plan shall address areas of vulnerability and determine the effect of such a failure to operations, equipment and public safety and health based upon such factors as topography, weather, sewer system size, and other site specific factors. The Plan shall include standard forms. The Plan shall have the following components:

(1) The WWTP component of the Emergency Response Plan shall establish standard operating procedures for use in emergency situations, including changes in process controls.

(2) The WCTS component of the Emergency Response Plan shall establish standard operating procedures for use in emergency operations, including identification of the actions staff should take in the event of emergency situations (specific to the type of emergency that could occur); criteria for initiating and ceasing emergency operations; identification of appropriate repair equipment and sources thereof; and instructions on how to operate equipment and systems during an emergency when they are not functioning as intended but are not fully inoperable.

(3) In addition to the reporting requirements set forth in Section [REF _Ref386811409 \w \h * MERGEFORMAT] (Reporting

Requirements), the City shall establish, in coordination with Public Health Authorities:

(a) Criteria to be used as the basis for immediately notifying the public and other impacted entities, such as users with a downstream water intake, of an emergency situation caused by a SSO, Prohibited Bypass, or effluent limit violation;

(b) A list identifying, by name, phone number and pager number, all the City staff who are responsible for notifying the public;

(c) A list identifying, by name and phone number, all Public Contacts, including local media outlets, who must be contacted during an emergency situation;

(d) A list identifying the City staff who are authorized to make public statements during emergency situations; and

(e) Pre-scripted news releases for various types of emergency situations.

(4) In addition to the notification requirements set forth in the NPDES Permits, and the reporting requirements set forth in Section [REF _Ref386811440 \w \h * MERGEFORMAT] (Reporting Requirements), the City shall establish, in coordination with Public Health Authorities:

(a) Criteria to be used as the basis for immediately notifying regulatory authorities, MDEQ, the City and the Public Health Authorities of any emergency situation caused by a SSO, Prohibited Bypass, or effluent limit violation;

(b) A list identifying, by name, phone number and pager number, all the City staff who are responsible for notifying the regulatory authorities;

(c) A list identifying, by name and phone number, all officials who must be contacted; and

(d) Standard reporting forms.

c. Information Management System ("IMS") Program. Within forty-eight (48) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, an IMS Program, as more particularly described below. At

a minimum, the IMS Program shall include the following:

(1) A management IMS component to provide City managers with guidance and instruction to adequately evaluate operations, maintenance, customer service, and Sewer System rehabilitation activities so that overall Sewer System performance can be determined and utility planning can be conducted. This IMS component shall utilize management reports and standard management forms.

(2) An operations IMS component to provide City managers and field supervisors with guidance to adequately track scheduled operational activities and to enhance operational performance. This IMS component shall utilize operating reports and standard operation forms used by field personnel and shall provide for field supervisor review.

(3) A maintenance IMS component to provide City managers and field supervisors with guidance to adequately track scheduled maintenance activities and to enhance maintenance performance. This IMS component shall utilize maintenance reports and standard maintenance forms used by field personnel. The system shall provide for field supervisor review.

(4) A description of what information will be fed into the system, how it will be entered and by what means it will be recorded.

(5) A description of the management reports that will be generated from the input data (i.e., work reports), including examples and periodicity for review of such reports.

(6) A description of the work reports that will be prepared and submitted, including examples and periodicity for review of such reports.

(7) Standard forms that will be used by both field personnel and management for the Program, where applicable.

(8) A detailed description of how the records will be maintained.

(9) If computer software will be utilized, a description of the software to be used with cited references for software training and procedures for utilizing the software.

(10) Implementation of improvements to the City's current~~s~~ Geographic

Information Systems ("GIS") mapping system of its entire WCTS on or before twenty-eight (28) Months after the Effective Date of this Consent Decree. Specifically, the City shall implement improvements to its current GIS as follows:

(a) An updated GIS database to include all as-builts and Active As-built Supplemental Information System ("AAS IS") forms, including new and corrected asset attribute data;

(b) Streamlining of the GIS data entry process for new assets, including electronic as-built data and necessary standards so that all new assets are added to the GIS system within ninety (90) calendar days of their activation in the field. Included shall be the development of a system to interface with the City WCTS hydraulic computer model so that the information can be efficiently exported to the WCTS hydraulic computer model;

(c) Simplification of the AAS IS process to facilitate wider usage;

(d) Development of a "flagging process" for damage investigators to note GIS inaccuracies;

(e) Provision for additional GIS training and refresher training;

(f) Use of online access to GIS maps to facilitate more widespread access to GIS resources to remote staff; and

(g) Determination via suitable as-built drawings, or GPS or traditional surveying field measurements, elevations of all manhole rim elevations and sewer inverts at connections to manholes and Pump Stations and their inclusion into GIS.

(11) Development and implementation of performance indicators to provide City managers with guidance to adequately evaluate data collected in the IMS for use in determining the condition of the Sewer System and an evaluation of the City's CMOM programs. Performance indicators shall include, without limitation, the linear footage of Gravity Sewer Line and Force Main inspections, the linear footage of Gravity Sewers cleaned, the number of manholes inspected, the number of manholes cleaned/maintained, the number of inverted siphons inspected, the number of inverted siphons cleaned/maintained, the number of SSOs per mile of Gravity

Sewer, the number of SSOs per mile of Force Main, the number of SSOs per Pump Station, per capita wastewater flow, NPDES Permit effluent compliance and such other performance indicators as the City may suggest and the EPA approves.

(12) Maintenance activity tracked by type (corrective, preventative, and emergency).

d. Sewer System Hydraulic Model. The City shall develop and maintain a calibrated hydraulic model of its Sewer System ("the Model") to establish existing hydraulic conditions and plan for future capacity needs of the Sewer System. The Model shall be developed concurrent with the sewer assessment and rehabilitation schedule for the initial assessment of the Priority Areas within the WCTS in Paragraph [REF _Ref387217918 \w \h * MERGEFORMAT] above. The model development schedule will be established based on system attribute data collected as part of the Sewer Mapping Program described in Paragraph [REF _Ref387217960 \w \h * MERGEFORMAT] below and flow and rainfall data collected as part of the flow monitoring program described in Paragraph [REF _Ref387217984 \w \h * MERGEFORMAT] above.

(1) At a minimum, the Model shall be capable of:

(a) Accurately predicting the flow rate and hydraulic grade line of wastewater in Force Mains from Major Pump Stations and the Major Gravity Sewer Lines under any historical dry or wet weather condition;

(b) Accurately predicting the location and severity of SSOs from the WCTS under any historical dry or wet weather condition;

(c) Fully dynamic temporal analysis, including an accounting of downstream backwater impacts on upstream flows;

(d) Accurately predicting the impacts of changes to Pump Station capacities on upstream and downstream flow rates and hydraulic grade lines, including hydraulic losses which may result from either full or partial Pump Station failures; and

(e) Generating hydrographs depicting baseline wastewater flow and I/I for the Sewer System for various storm recurrence intervals. The Model shall include methods for accurately estimating the baseline wastewater flows and I/I components in each Sewershed using quality-controlled flow data obtained for the Sewer System.

(2) At a minimum, the City shall employ the Model to:

(a) Assist with the development and implementation of operation and maintenance procedures that optimize collection and transmission capacity;

(b) Evaluate the impacts which Infiltration/Inflow rehabilitation projects, proposed system modifications, and upgrades and expansions have on collection and transmission capacity and the performance of the City's Sewer System;

(c) Prioritize the continuing evaluation of the WCTS pursuant to the sewer assessment and rehabilitation in Paragraphs [REF _Ref387218022 \w \h * MERGEFORMAT] and [REF _Ref387217918 \w \h * MERGEFORMAT] above;

(d) Prioritize rehabilitation projects; and

(e) Implement the Capacity Assurance Program described in Paragraph [REF _Ref387218080 \w \h * MERGEFORMAT] below.

(3) The City shall develop and employ written procedures, protocols, and schedules to routinely perform:

(a) Calibrations of the Model to account for age-related and other changes to Sewer System hydraulics, and to obtain and manage updated data from physical field observations and measurements for this purpose;

(b) Verification of the Model's accuracy and performance; and

(c) Sensitivity analyses to determine how the Model responds to changes in input parameters and variables.

(4) Within eight (8) Months after the completion of the Mapping Program for each Priority Area and of the rest of the Sewer System as set forth in Paragraph [REF _Ref486234474 \w \h] below, the City shall submit a report ("Model Report") for each applicable area to the EPA which:

(a) Identifies the functional attributes, characteristics, and limitations specific to the Model's software as compared to other products evaluated by the City, and explains how the Model meets

the capabilities required in Paragraph [REF _Ref387218158 \w \h * MERGEFORMAT] above;

(b) Identifies the date that the Model was deemed to be calibrated and functional;

(c) Identifies all input and output parameters, constants, and assumed values used by the Model;

(d) Explains the bases for the input parameters used in each Sewershed to characterize baseline wastewater flows and I/I, the quality assurance procedures used in acquiring the input data, and the engineering bases for the selections of constants (e.g., friction factors) and assumed values; and

(e) Provides a brief description of each procedure and protocol developed pursuant to Paragraph [REF _Ref387218213 \w \h * MERGEFORMAT] above, provides the associated schedules, and identifies the individual(s) with their qualifications who are employed to implement the procedures and protocols.

(5) Following receipt of the Model Report, the EPA and MDEQ may conduct compliance audits of the capabilities of the Model, the implementation of the Model, and the use of written procedures and protocols as required by this Paragraph.

e. Sewer Mapping Program. Within twenty-eight (28) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Sewer Mapping Program to update its Sewer System maps and update the capabilities and procedures for utilization of the City's future Geographic Information System ("GIS") map of the City's WCTS. At minimum, the Sewer Mapping Program shall:

(1) Enable the City to produce maps of the WCTS using GIS technology;

(2) Be designed in such a manner so as to allow electronic integration with the City's computer-based collection system model and computer-based operations and maintenance information management system;

(3) Enable the City to produce maps showing the location of all manholes, Gravity Sewer Lines, Pump Stations, Force Mains, valves, inverted siphons and the WWTPs;

(4) Enable the City to produce maps capable of integrating electronically the locations of sewer service connections on lines that are televised;

(5) Enable the City to produce maps that include attribute data for the City's WCTS including, but not limited to, size, material, estimated age or age range, slope, invert elevation, and rim elevation;

(6) Enable the City to produce maps that delineate the spatial boundaries of all Sewersheds within the WCTS;

(7) Enable the City to produce maps that can integrate electronically available maps that show the location of surface streets and street addresses, permitted Fats, Oils and Grease ("FOG"; see Paragraph [REF _Ref387221731 \w \h]) customers, surface water bodies and political boundaries;

(8) Enable the City to produce maps in a manner that will allow use by all Sewer System operation and maintenance crew leaders in the field;

(9) Allow entry and mapping of work orders to identify and track problems geographically such as stoppages, service interruptions, and SSOs, and to assist in the planning and scheduling of maintenance;

(10) Include written standard operating procedures for use of the program, the acquisition and entry of updated mapping data for new assets or changes to existing assets, and updates to system software;

(11) Include locations of each permitted FOG establishment; and

(12) Include an expeditious schedule for the completion of the electronic mapping of Priority Area 1 no later than thirty-eight (38) Months after the Effective Date, of Priority Area 2 no later than forty-eight (48) Months after the Effective Date, and of the rest of the Sewer System no later than fifty-eight (58) Months after the Effective Date.

f. Gravity Sewer System Operations and Maintenance Program. Within twenty-four (24) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Gravity Sewer System Operations and

Maintenance Program to address SSOs, particularly those caused by FOG, roots and/or debris obstructions. At a minimum, the Gravity Sewer System Operations and Maintenance Program shall include the following:

(1) Written preventative operations and maintenance schedules and procedures which shall be scheduled appropriately and shall include, but not be limited to, written procedures for the following:

(a) Inspection and maintenance of all Gravity Sewers, manholes and inverted siphons;

(b) Identifying and documenting Gravity Sewer, manhole and inverted siphon conditions, including grease, roots, and/or debris accumulation;

(c) Identifying maintenance needs; and

(d) Scheduling preventative maintenance work/cleaning which the City may schedule in connection with the SSER Work Plan as described in Paragraph [REF _Ref387218022 \w \h * MERGEFORMAT] above.

(2) An engineering evaluation of potential sulfide and corrosion control options and a summary report of findings, including a recommendation of the preferred sulfide and corrosion control method(s); provided, however, that such corrosion control options and methods shall not apply to components made of plastic or other similar materials.

(3) Prioritization for evaluating the Gravity Sewers based upon the size of the pipe (e.g., starting with the larger pipes and work back to smaller pipes), location of SSOs, community input or other criteria the City finds appropriate.

(4) Inspection of Gravity Sewers, manholes, and inverted siphon easements, including inspection of creek crossings, canal crossings, stream bank encroachment toward Gravity Sewers, manholes and inverted siphons, and easement accessibility (including the need to control vegetative growth or encroachment of man-made structures or activities that could threaten the integrity of the affected Gravity Sewer, manhole, or inverted siphon). Inspections shall include written reports, and where appropriate, representative photographs or videos of appurtenances being inspected (Gravity Sewers, manholes, inverted siphons, creek crossings, canal crossings, etc.).

Inspectors shall promptly report any observed SSOs to their area supervisors and shall record any evidence of SSOs which may have occurred since the last inspection. Any observed SSO shall be promptly reported in accordance with the SORP.

(5) A schedule for the maintenance of easements.

(6) A staffing and funding plan sufficient in structure, skills, numbers and funding to allow completion of the operation and maintenance activities required by this Paragraph [REF _Ref387218300 \w \h * MERGEFORMAT].

(7) Data attributes for the City's mapping program allowing program data to be compared in the City's IMS against other pertinent data such as the occurrence of SSOs, including repeat SSO locations and permit violations.

(8) An inventory management system that includes:

(a) A list of critical equipment and critical spare parts;

(b) A list of where critical spare parts and critical equipment may be secured to allow repairs in a reasonable amount of time for those spare parts and critical equipment that are not stored by the City, including spare pipe having a diameter of 24 inches or greater; the list shall also set forth an inventory of spare parts and critical equipment stored by the City, as applicable; and

(c) Written procedures for updating the critical spare parts and equipment inventories in the IMS.

(9) Reports which list equipment problems and the status of work orders generated during the prior Month.

g. Pump Station Operations and Preventative Maintenance Program. Within twenty-one (21) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Pump Station Operations and Preventative Maintenance Program to facilitate proper operation and maintenance activities associated with the Pump Stations within the WCTS. At a minimum, the Pump Station Operations and Preventative Maintenance Program shall include the following:

(1) Identification of the means and modes of communication between Pump Stations, field crews, and supervising staff.

(2) Technical specifications of each Pump Station within the WCTS.

(3) A description of each Pump Station monitoring system which shall continuously monitor, report, and transmit information for each Pump Station.

(4) Written preventative operations and maintenance schedules and procedures which shall be scheduled appropriately and shall include, but not be limited to, written procedures for periodic service and calibration of instrumentation such as flow meters, liquid level sensors, alarm systems, elapsed time meters, and remote monitoring equipment. Such written preventative operations and maintenance schedules and procedures shall also include predictive (including non-physical inspections) and/or physical inspection and service for all Pump Stations including, but not limited to:

(a) Reading, recording and maintaining records of information from the elapsed time meters and pump start counters;

(b) Observing and documenting wet well conditions, including grease and/or debris accumulation;

(c) Checking and re-setting, as necessary to improve system performance, wet well pumping points (e.g., floats);

(d) Checking, recording and maintaining records of system pressure(s);

(e) Checking SCADA and/or alarm components;

(f) Checking stand-by power sources;

(g) Checking motor electrical system, including, but not limited to, line voltage on each leg quarterly, current draw on each leg quarterly, and resistance of windings on each leg quarterly; and

(h) Identifying maintenance needs.

(5) Written standard emergency/reactive operations and maintenance procedures. The City may use portable pumps, portable generators or alternative power sources as it deems appropriate. At a minimum, the standard emergency/reactive Pump Station operating procedures shall include:

(a) Criteria used to determine the need for emergency operations and maintenance;

(b) Initiation/use of stand-by power (e.g., portable generators), where applicable;

(c) Initiation/use of portable pump (e.g., bypass/pump-around operations), where applicable;

(d) Evaluation of the need for additional equipment for emergency/reactive operations, including, but not limited to, additional portable generators and/or additional portable pumps (for pump-around operations);

(e) Evaluation of the need for on-site standby power (e.g., on-site generator and/or second electrical feed from the power grid) for each Pump Station should the City choose, not to have a portable pump available for the Pump Station; and

(f) Establishing standard forms, reporting procedures and performance measures for emergency/reactive operations and maintenance.

(6) An inventory management system that includes:

(a) A list of critical equipment and critical spare parts;

(b) A list of where critical spare parts and critical equipment may be secured to allow repairs in a reasonable amount of time for those spare parts and critical equipment that are not stored by the City; the list shall also set forth an inventory of spare parts and critical equipment stored by the City, as applicable; and

(c) Written procedures for updating the critical spare parts and equipment inventories in the IMS.

(7) Reports which list equipment problems and the status of work orders generated during the prior Month.

(8) A staffing and funding plan sufficient in structure, skills, numbers and funding to allow completion of the operations and maintenance activities required by this Paragraph [REF _Ref387218349 \w \h * MERGEFORMAT].

h. Fats, Oils and Grease ("FOG") Control Program. Within eighteen (18) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a FOG Control Program. At a minimum, the FOG Control Program shall apply City-wide and include the following:

(1) A FOG characterization study that shall identify the sources of FOG causing problems in the WCTS and the most appropriate method or mechanism for addressing those sources.

(2) The legal authority to control the discharge of FOG into the WCTS, including the ability to implement a permit and enforcement program for commercial and industrial sources.

(3) Specification of accepted devices to control the discharge of FOG into the WCTS.

(4) Establishment of standards for the design and construction of FOG control devices including standards for capacity and accessibility, site map, design documents and as-built drawings.

(5) Establishment of FOG control device management, operations and maintenance standards, or best management practices, that address onsite record keeping requirements, cleaning frequency, cleaning standards, use of additives, and ultimate disposal.

(6) Establishment of construction inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements, to assure that FOG control devices are constructed in accordance with established design and construction standards.

(7) Establishment of compliance inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements to assure that FOG control devices are being managed, operated and maintained in accordance with the established management, operation and maintenance standards or best management practices.

(8) Establishment of a FOG disposal manifest system, with the included requirements that FOG and septage not be comingled and that the point of origin be specified on the manifest.

(9) Establishment of an enforcement program, including specific enforcement mechanisms, to ensure compliance with the FOG Control Program.

(10) Establishment of a compliance assistance program to facilitate training of FOG generators and their employees.

(11) Establishment of a comprehensive public education program directed at reducing the amount of FOG entering the WCTS from

residences.

(12) Establishment of staffing (technical and legal) and equipment requirements to ensure effective implementation of the FOG Control Program.

(13) A regularly maintained list of current commercial establishment FOG generators including a description of their FOG generating processes and estimated average quantity of FOG generated daily.

(14) Establishment of performance indicators to be used by the City to measure the effectiveness of the FOG Control Program.

(15) A schedule to review, evaluate and revise the FOG Control Program on at least an annual basis. Any revisions to the FOG Control Program shall be submitted to the EPA in accordance with Paragraphs [REF _Ref387218411 \w \h * MERGEFORMAT] through [REF _Ref387218427 \w \h * MERGEFORMAT] and [REF _Ref387218452 \w \h * MERGEFORMAT] of this Consent Decree.

Within six (6) Months after the EPA's approval of the FOG Control Program, the City shall enact the necessary City ordinances for the immediate implementation of the Program. After the ordinances become effective as provided by State law, the City shall implement the FOG Control Program, which shall be incorporated into, and become enforceable under, this Consent Decree.

i. Capacity Assurance Program. Within thirty-six (36) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval, a Capacity Assurance Program ("CAP"), including a schedule for full implementation of the program not to exceed forty-eight (48) Months after the Effective Date. Pursuant to the capacity assessment performed in accordance with Paragraphs [REF _Ref387218022 \w \h * MERGEFORMAT] and [REF _Ref387217918 \w \h * MERGEFORMAT] above, the CAP shall identify any portion of the Sewer System with insufficient capacity under either peak wet weather, or average conditions, or both. It shall also analyze all portions of the WCTS that hydraulically impact all known SSOs and all components of a WWTP that may contribute to violations of the NPDES Permits. The CAP shall assess peak flow capacity of all Pump Stations, all Major Sewer Gravity Lines, all Force Mains and siphons and their respective related appurtenances, all known SSO locations, and any other portions of the WCTS that must be assessed so as to allow a technically-sound evaluation of the causes of SSOs and Prohibited Bypasses at a WWTP for existing and proposed flows. The CAP shall enable the City to authorize new sewer service connections, or increases in flow from existing sewer service connections, only after the City certifies that the analysis procedures contained in the approved CAP have

been used and that the City has determined, based on those procedures, that there is Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity as set forth below. The Capacity Assurance Program shall include, at a minimum, the following:

(1) The technical information, methodology, and analytical techniques, including the model or software, to be used by the City to calculate collection, transmission, and treatment capacity.

(2) The means by which the City will integrate its certification of Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity with the issuance of building permits by the City and the City's acquisition of new or existing sewers from other owners.

(3) The means by which the City will integrate its certification of Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity with the requirements of Mississippi Commission on Environmental Quality Regulation 11 Miss. Admin. Code Part 6, Ch.1, Rule 1.1.1.C(1)(b) and Rule 1.1.6.B(2) and B(4), regarding the certification of capacity for the construction of new sewer lines that provide new flow into the City's Sewer System.

(4) The technical information, methodology, and analytical techniques, including the model or software, to be used by the City to calculate the net (cumulative) increase or decrease in volume of wastewater introduced to the WCTS as a result of the City's authorization of new sewer service connections and increases in flow from existing connections and the completion of: (i) specific projects that add or restore collection or transmission capacity to the WCTS or add or restore adequate treatment capacity at a WWTP as required by 40 C.F.R. § 133 ("Capacity Enhancing Projects"), (ii) specific projects that reduce peak flow through removal of I/I ("I/I Projects"), and (iii) permanent removal of sewer connections ("Removal of Connections").

(5) An Information Management System capable of tracking the accumulation of banked credits, earned pursuant to Paragraph [REF _Ref387218542 \w \h * MERGEFORMAT] below, from completion of Capacity Enhancing Projects, I/I Projects and Removal of Connections; the capacity-limited portion of the Sewershed in which those credits were earned; and the expenditure of such credits on future increases in flow from new or existing

sewer service connections in that capacity-limited portion of the Sewershed.

(6) All evaluation protocols to be used to calculate collection, transmission, and treatment capacity including, but not limited to, standard design flow rate rules of thumb regarding pipe roughness, manhole head losses, as-built drawing accuracy (distance and slope), water use (gallons per capita per day), projected flow impact calculation techniques, and metering of related existing peak flows (flows metered in support of analysis and/or manual observation of existing peak flows). The City may identify sewer line segments which have been specifically designed and constructed to operate under surcharge conditions (e.g., with welded or bolted joints) and identify the level of surcharge for those segments.

(7) Capacity Certifications. Except as provided in Paragraphs [REF _Ref387218643 \w \h * MERGEFORMAT] through [REF _Ref387218698 \w \h * MERGEFORMAT] below, the City shall implement the CAP by authorizing a new sewer service connection, or additional flow from an existing sewer service connection, only after it certifies that the analysis procedures contained in the CAP have been used and that the City has determined, based on those procedures, that there is Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity as defined below:

(a) Treatment Capacity Certifications. The City's certification of "Adequate Treatment Capacity" shall confirm that, at the time a WWTP receives the flow from a proposed sewer service connection(s) or increased flow from an existing sewer service connection(s), when combined with the flow predicted to occur from all other authorized sewer service connections (including those which have not begun to discharge into the WCTS), the WWTP will not be in "non-compliance" for quarterly reporting as defined in 40 C.F.R. Part 123.45, Appendix A. In addition, the City's certification of "Adequate Treatment Capacity" shall confirm that the new or increased flow to a WWTP will not result in a Prohibited Bypass.

(b) Transmission Capacity Certifications. The City's certification of "Adequate Transmission Capacity" shall confirm that each Pump Station, through which the proposed additional flow from new or existing sewer service connections would pass to

the WWTP receiving such flow, has the capacity to transmit, with its largest pump out of service, the existing one (1) hour peak flow passing through the Pump Station, plus the addition to the existing one (1) hour peak flow predicted to occur from the proposed connection, plus the addition to the existing one (1) hour peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the WCTS.

(c) Collection Capacity Certifications. The City's certification of "Adequate Collection Capacity" shall confirm that each Major Gravity Line, through which the proposed additional flow from new or existing connections would pass, has the capacity to carry the existing one (1) hour peak flow passing through the Major Gravity Line, plus the addition to the existing one (1) hour peak flow from the proposed connection, plus the addition to the existing one (1) hour peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the WCTS without causing a Surcharge Condition.

(d) Definition of "One (1) Hour Peak Flow" and "Surcharge Condition." The terms set forth below are defined herein only for purposes of implementation of the CAP. The City agrees that it shall not use these definitions for purposes of establishing any design criteria for the implementation of rehabilitation measures to the Sewer System. The term "one (1) hour peak flow" shall mean the greatest flow in a sewer averaged over a sixty (60) minute period at a specific location expected to occur as a result of a representative 2 year-24 hour storm event. The term "Surcharge Condition" shall mean the condition that exists when the supply of wastewater resulting from the one (1) hour peak flow is greater than the capacity of the pipes to carry it and the surface of the wastewater in manholes rises to an elevation greater than twenty-four (24) inches above the top of the pipe or within three (3) feet of the rim of the manhole, and the sewer is under pressure or head, rather than at atmospheric pressure, unless the City has, pursuant to Paragraph [REF _Ref387221235 \w \h * MERGEFORMAT] above, identified that pipe segment and manhole as designed to operate in that condition, in which case the identified level of surcharge will be used.

(8) Minor Sewer Connections. For minor sewer service connections, the City may elect to perform a monthly capacity analysis for each Sewershed by certifying that the Sewershed has adequate capacity,

as defined above, to carry existing peak flows and the additional flows generated by all such minor sewer service connections projected to be approved in the subsequent month. For any Sewershed which can be so certified, the City may approve these projected minor sewer service connections without performing individual certifications for each connection. For the purposes of this Paragraph only, a "minor sewer service connection" is a connection with an average flow not to exceed 2,500 gallons per day.

(9) Capacity for Treatment, Transmission, and Collection in Lieu of Certification. The City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot satisfy the requirements of Paragraph [REF _Ref387221283 \w \h * MERGEFORMAT] above, provided the City certifies that all of the following provisions, where applicable, are satisfied:

(a) The City is in substantial compliance with this Consent Decree;

(b) The sewer lines which will convey the proposed additional flow from new or existing sewer service connections have not experienced dry weather SSOs due to inadequate capacity within the previous twelve (12) Months; or, in the alternative, the causes of any dry weather SSOs due to inadequate capacity have been eliminated;

(c) The City has identified the sewer line segment(s), Pump Station(s) and/or wastewater treatment systems that do not meet the conditions for certification of Adequate Treatment Capacity, Adequate Collection Capacity, and/or Adequate Transmission Capacity;

(d) The City shall complete, prior to the time the proposed additional flow from new or existing sewer service connections is introduced into the WCTS, specific Capacity Enhancing Projects, I/I Projects, and/or Removal of Connections which will add sewer capacity or reduce peak flows to the identified sewer line segment(s), Pump Station(s), and wastewater treatment system(s) in accordance with the factors set forth in Paragraphs [REF _Ref387221348 \w \h * MERGEFORMAT] and [REF _Ref387221388 \w \h * MERGEFORMAT] below;

(e) Where the City has undertaken specific Capacity Enhancing Projects that provide for additional off-line storage or additional treatment capacity, and/or specific Removal of Connections to satisfy the requirements of Paragraph [REF _Ref387221430 \w \h * MERGEFORMAT] above, the estimated added capacity resulting from such projects must be equal to or greater than the estimated amount of any proposed additional flow;

(f) Where the City has undertaken specific I/I Projects or Capacity Enhancing Projects, other than those that provide for additional off-line storage or additional treatment capacity, to satisfy the requirements of Paragraph [REF _Ref387221430 \w \h * MERGEFORMAT] above, the estimated reduction in peak flows or added capacity resulting from such projects must exceed the estimated amount of any proposed additional flow by a factor of 3:1;

(g) Commencing within twelve (12) Months after the EPA's approval of the CAP and annually thereafter, the City has performed a review of specific Capacity Enhancing Projects and I/I Projects undertaken to determine if actual added capacity and peak flow reductions are in line with what the City originally estimated for such projects; and the City has used the results of this review to adjust future estimates as necessary;

(h) Any new sewer service connection or increase in flow to an existing connection authorized prior to the completion of a necessary added capacity or peak flow reduction project as set forth above shall be conditioned upon completion of such project prior to the time that the new sewer service connection or flow increase is introduced into the WCTS; and

(i) In implementing the provisions of this Paragraph [REF _Ref387218542 \w \h], the City may use a "banking credit system" for the sewer line segment(s), Pump Station(s), and/or wastewater treatment systems for which the City is not able to satisfy the conditions set forth in Paragraph [REF _Ref387221283 \w \h * MERGEFORMAT] above. The addition of sewer capacity and/or reduction in peak flows to the affected sewer line segment, Pump Station, or wastewater treatment system from (i) the completed sanitary sewer projects set forth on Appendix A, (ii) the Early Action Projects set forth on Appendix B, and/or (iii) Capacity Enhancement Projects, I/I Projects, and Removal of Connections completed after the Effective Date of this Consent

Decree may be accumulated in the form of credits in the banking credit system in accordance with the factors set forth in Paragraphs [REF _Ref387221348 \w \h] and [REF _Ref387221388 \w \h] above. Such credits may then be used for authorization of future sewer service connections or increases in flow from existing connections to the affected sewer line segment, Pump Station, or wastewater treatment system in the capacity-limited portion of the Sewershed. Increases in flow from all authorized new sewer service connections or increases in flow from existing connections occurring between the Effective Date of this Consent Decree and when the City begins full implementation of the CAP shall be deducted from any such accumulated credits in the banking credit system.

(10) Essential Services. Notwithstanding the above provisions, the City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot certify that it has Adequate Transmission Capacity, Adequate Collection Capacity, and/or Adequate Treatment Capacity as defined above for health care facilities, public safety facilities, and public schools and, subject to the EPA review and approval, for government facilities; and in those cases where a pollution or sanitary nuisance condition exists, as determined by the local county health department or its regulatory successor, as the result of a discharge of untreated wastewater from an on-site septic tank.

(11) Existing Illicit Connections. Notwithstanding the provisions above, the City may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot certify that it has Adequate Transmission Capacity and/or Adequate Collection Capacity and/or Adequate Treatment Capacity as defined above, for any illicit connections to the municipal separate storm sewer system ("MS4") which would otherwise result in the discharge of municipal sewage to waters of the State.

(12) Certifications. All certifications pursuant to this Paragraph [REF _Ref387218080 \w \h * MERGEFORMAT] shall be made by a professional engineer registered in the State of Mississippi and shall be approved by a responsible party of the City as defined by 40 C.F.R. § 122.22(b). The City shall maintain all such certifications, and all data on which the certifications are based, in its offices for inspection by the EPA and MDEQ. The EPA and MDEQ may request, and the City shall provide, any and all documentation necessary to support any certification made by the

City pursuant to this Paragraph [REF _Ref387218080 \w \h * MERGEFORMAT], and make available, to the extent possible, individuals providing such certifications to meet with the EPA and MDEQ.

j. Training Program. Within thirty-two (32) Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a Training Program, including a schedule for full implementation of the program not to exceed twelve (12) Months after its approval by the EPA. The Training Program shall include, at a minimum, the following:

(1) Technical Training. The technical training component shall include, at a minimum, the following:

(a) Employee technical training and refresher technical training requirements (curriculum) that ensure that each City employee has a level of knowledge, commensurate with duties, of the overall functions of the City's infrastructure;

(b) A description of outside technical training and networking opportunities, such as conferences and seminars, that are made available to City employees;

(c) A description of the extent to which employee certification, at the State or at the City level, is required as a basis for obtaining or maintaining a position;

(d) Records of technical training, including on-the-job training, which shall be maintained in an information management system and shall describe the degree to which completed technical training and on-the-job training is tied to promotion and pay; and

(e) A description of the technical training required before an employee can undertake specific work assignments or tasks.

(2) Skills Training. The skills training component shall include, at a minimum, the following:

(a) Employee skills training and refresher skills training requirements (curriculum) that ensure that each City employee has a level of knowledge, commensurate with duties, of the specific equipment to be used and the procedures to be followed in carrying out duties;

(b) A description of outside skills training opportunities,

such as manufacturers' training, that are made available to employees;

(c) A description of the extent to which employee certification, at the State or at the City level, is required as a basis for obtaining or maintaining a position;

(d) Records of skills training, including on-the-job training, which shall be maintained in an information management system) and shall describe the degree to which completed skills training and on-the-job training is tied to promotion and pay; and

(e) A description of the skills and on-the-job training required before an employee can undertake specific work assignments or tasks.

(3) Safety Training. The safety training component shall include, at a minimum, the following:

(a) Employee safety training and refresher safety training requirements (curriculum) that ensure that each City employee has level of knowledge regarding on-the-job safety that is commensurate with the employee's equipment and work environment;

(b) A description of the extent to which employee safety certification at the State or at the City level is required as a basis for obtaining or maintaining a position;

(c) Records of safety training, including on-the-job training, which shall be maintained in an information management system and shall describe the degree to which completed safety training and on-the-job training is tied to promotion and pay; and

(d) A description of the safety training required before an employee can undertake specific work assignments or tasks.

k. Chronic SSO Advanced Remote Monitoring Program. Within twelve (12)~~sixteen (16)~~ Months after the Effective Date of this Consent Decree, the City shall submit to the EPA for review and approval a list of SSO locations in the WCTS that have experienced more than one (1) wet-weather related SSO in the previous twelve (12)-month period (Chronic SSO List). The City shall designate on the Chronic SSO List which SSO locations it proposes to install and maintain manhole and/or sewer surcharge level remote monitoring devices in accordance with the provisions of this Paragraph 23.k.

For those SSO locations not so designated, the City shall include along with and as a part of the Chronic SSO List Deliverable a demonstration that such remote devices are not necessary because either the City has a definitive, detailed plan and expeditious deadline for addressing the cause of the SSO at that location, the SSOs at that location were the result of an extraordinary rain event such as a hurricane or tropical storm, or two (2) or more SSO locations are related in such a manner that a single remote monitoring device can provide the required real-time alert for likely SSOs at the multiple locations. The Chronic SSO List Deliverable shall also include a description of the thresholds (Thresholds) to be established for the remote monitoring devices that will trigger real-time alerts of a likely SSO event or events. The City shall install and maintain manhole and/or sewer surcharge level remote monitoring devices at the SSO locations so designated~~identified~~ on the Chronic SSO List~~Appendix F, attached hereto and incorporated herein,~~ in accordance with the provisions of this Paragraph 23.k ~~below~~ within four (4) Months of the EPA's approval of the Chronic SSO List.

~~(1) After this initial sixteen (16) Month period, the City shall on a quarterly basis determine whether any SSO location in the WCTS experienced more than one (1) wet-weather related SSO in the previous twelve (12) month period. The City shall then install and maintain manhole and/or sewer surcharge level remote monitoring devices at such SSO locations within four (4) Months after making such determination.~~

~~(2)~~(1) The remote monitoring devices shall monitor sewer surcharge levels and shall be designed to send to the City real-time alerts of a likely SSO event or events when the Tthresholds specified by the City ~~(Thresholds)~~ are attained and/or exceeded, thereby improving the City's responsiveness to SSOs and sewer operations with the goal of preventing SSOs from occurring at these SSO locations. ~~Within fourteen (14) Months after the Effective Date of this Consent Decree, the City shall submit its Thresholds to the EPA for review and approval.~~

(2) The City shall expeditiously inspect a SSO location after a remote monitoring device indicates that the applicable Threshold has been attained and/or exceeded for that SSO location. The City shall keep records with respect to all remote monitoring devices and SSO locations for a period of at least five (5) years. The City shall report all surcharge conditions identified by the remote monitoring devices in the Quarterly Reports pursuant to Paragraph [REF _Ref485825796 \w \h] of this Consent Decree. The City shall report all SSOs discovered pursuant to the remote monitoring devices in accordance with the NPDES Permits, the SORP, and the Quarterly and Annual Reports pursuant to Paragraphs [REF

_Ref485825796 \w \h]- and [REF _Ref485634140 \w \h] of this Consent Decree.

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(3) If the City elects to monitor multiple SSO locations through a single remote monitoring device, the City shall expeditiously inspect all such related SSO locations when the applicable remote monitoring device indicates that the specified Thresholds have been attained and/or exceeded. The City shall also evaluate the benefits of this technology and other remote wastewater detection technologies for continued use within the WCTS to increase efficiency in SSO prevention/response and to enhance hydraulic modeling efforts.

(4) One (1) year after the EPA's approval of the initial Chronic SSO List above and each year thereafter, the City shall submit to the EPA for review and approval an annual update to the Chronic SSO List that provides for the following:

(a) The identification of additional SSO location in the WCTS that experienced more than one (1) wet-weather related SSO in the previous twelve (12)-month period. The City shall designate on the updated Chronic SSO List which of these new SSO locations it proposes to install and maintain manhole and/or sewer surcharge level remote monitoring devices in accordance with the provisions of this Paragraph 23.k. For those new SSO locations not so designated, the City shall include along with and as a part of the updated Chronic SSO List a demonstration that such remote devices are not necessary because either the City has a definitive, detailed plan and expeditious deadline for addressing the cause of the SSO at that location, the SSOs at that location were the result of an extraordinary rain event such as a hurricane or tropical storm, or two (2) or more SSO locations are related in such a manner that a single remote monitoring device can provide the required real-time alert for likely SSOs at the multiple locations. The City shall then install and maintain manhole and/or sewer surcharge level remote monitoring devices at such new SSO locations within four (4) Months after the EPA's approval of the updated Chronic SSO List.

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If applicable, a demonstration that~~The City shall maintain these~~ remote monitoring devices at a particular SSO location(s) on the Chronic SSO List should be removed from the list because

~~required by this Paragraph~~ [REF _Ref485890386 \w \h] ~~until such time as the City can demonstrate to the EPA that~~ the cause of the SSO at the ~~a~~ particular location(s) has been appropriately addressed and such location(s) has not experienced more than one (1) wet-weather related SSO in the previous twelve (12)-Month period.

~~(5)~~(c) If applicable, a demonstration that, a~~-~~

~~(6)~~ ~~A~~s an alternative to placing a remote monitor at each SSO location on the Chronic SSO list as otherwise required by this Paragraph [REF _Ref485890386 \w \h], ~~the City may elect to reduce the number of~~ remote monitoring devices should be removed because ~~if it can demonstrate to the EPA that t~~two (2) or more SSO locations are related in such a manner that a single remote monitoring device can provide the required real-time alert for likely SSOs at the multiple SSO locations ~~specified by the City~~. ~~If the City elects to monitor multiple SSO locations through a single remote monitoring device, the City shall expeditiously inspect all such related SSO locations when the applicable remote monitoring device indicates that the specified Thresholds have been attained and/or exceeded. The City shall also evaluate the benefits of this technology and other remote wastewater detection technologies for continued use within the WCTS to increase efficiency in SSO prevention/response and to enhance hydraulic modeling efforts.~~

24. Permits. Where any compliance obligation under this Section requires the City to obtain a federal, state, or local permit or approval, the City shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The City may seek relief under the provisions of Section [REF _Ref322450615 \r \h * MERGEFORMAT] (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the City has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VIII. **CIVIL PENALTY**

25. Within thirty (30) Days after the Effective Date, the City shall pay the sum of $165,600 as a civil penalty as follows: $82,800 to the United States and $82,800 to the State.

26. The City shall pay the civil penalty due to the United States either by use of https://www.pay.gov to the U.S. Department of Justice account, or by FedWire Electronic Funds Transfer ("EFT"), in accordance with instructions provided to the City by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Southern District of Mississippi after

the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which the City shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Mayor, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501
mayor@hattiesburgms.com

on behalf of the City. The City may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and the EPA in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT] (Notices). At the time of payment, the City shall send notice that payment has been made: (i) to the EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at the EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT]; and (iii) to the EPA in accordance with Section [REF _Ref372023964 \n \h * MERGEFORMAT]. Such notice shall reference the CDCS Number and DOJ case number 90-5-1-1-10964. In the event that full cash payment to the United States is not made within thirty (30) Days of the Effective Date, the City shall also pay to the United States interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

27. The City shall pay the civil penalty due to MDEQ by check payable to the "Mississippi Department of Environmental Quality." The check shall reference the case name and civil action number herein and shall be sent to: Mississippi Department of Environmental Quality, Attn: Jennifer Parish, P.O. Box 2339 Jackson, Mississippi 39225. In the event that full cash payment to MDEQ is not made within thirty (30) Days of the Effective Date, the City shall also pay to MDEQ interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT

28. The City shall satisfactorily implement and complete the Supplemental Environmental Project ("SEP") in accordance with all provisions of Appendix E of this Consent Decree, attached hereto and incorporated herein. The SEP shall be completed in accordance with the schedule set forth in Appendix E.

29. As more particularly described in Appendix E, the SEP shall consist of projects to reduce extraneous flows entering the WCTS through defective private laterals and through illicit connections from residential properties the owners of which face financial hardship as determined under Section B of Appendix E. The total expenditure for the SEP shall be not less

than $220,800, exclusive of certain costs detailed in Section C of Appendix E. The City may use contractors or consultants in planning and implementing the SEP.

30. With regard to the SEP, the City certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the City in good faith estimates that the cost to implement the SEP is $220,800.

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

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

d. That the City has not received and will not receive credit for the SEP in any other enforcement action.

e. That the City will not receive any reimbursement for any portion of the SEP from any other person.

f. That the City is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP and that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could fund the same activity as the SEP. For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, federal loan, or federally-guaranteed loan, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

31. "Satisfactory completion" of the SEP shall include the completion of a minimum number of forty-five (45) repairs or replacements of defective private laterals or removals of illicit connections, and a minimum expenditure of $220,800 of eligible SEP costs.

32. SEP Completion Report. Within thirty (30) Days after the date set for completion of the SEP, the City shall submit a SEP Completion Report to the EPA for review and approval. The SEP Completion Report shall contain all of the following information:

a. A detailed description of the SEP as implemented.

b. A description of any problems encountered in completing the SEP and the

solutions thereto.

c. An itemized list of all eligible SEP costs expended.

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree.

e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

33. The EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate the City's SEP Completion Report.

34. After receiving the SEP Completion Report, the EPA shall notify the City whether or not the City has satisfactorily completed the SEP. If the City has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section [REF _Ref475015844 \w \h] of this Consent Decree.

35. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section [REF _Ref405378877 \w \h] of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

36. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph [REF _Ref387046011 \w \h].

37. Any public statement, oral or written, in print, film, or other media, made by the City making reference to the SEP under this Decree from the date of its execution of this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States et al. v. City of Hattiesburg, taken on behalf of the U.S. Environmental Protection Agency and the Mississippi Department of Environmental Quality to enforce the Clean Water Act and the Mississippi Air and Water Pollution Control Law."

X. **REPORTING REQUIREMENTS**

38. The City shall submit the following reports:

a. Quarterly Reports. Beginning one (1) Month after the first Calendar Quarter following the Effective Date of this Consent Decree, and one (1) Month after each subsequent Calendar Quarter thereafter until termination of the Consent Decree, the City shall submit to the EPA for review and approval a Quarterly Report that shall include the date, time, location, source, estimated duration, estimated volume, receiving

water (if any), and cause of all SSOs occurring in the applicable three (3)-Month period in a tabulated electronic format. ~~Beginning sixteen (16) Months after the Effective Date of this Consent Decree,~~ When available pursuant to Paragraph [REF _Ref485890386 \w \h], of this Consent Decree, each Quarterly Report shall also ~~(i) indicate whether a reported SSO experienced more than one (1) wet-weather related SSO event in the previous twelve (12) month period and (ii)~~ include information on all surcharge conditions identified by the remote monitoring devices as required pursuant to Paragraph [REF _Ref485890386 \w \h] of this Consent Decree.

b. Semi-Annual Reports. Beginning one (1) Month after the first two (2) Calendar Quarters following the Effective Date of this Consent Decree, and one (1) Month after each subsequent two (2) Calendar Quarters until termination of the Consent Decree, the City shall submit to the EPA for review and approval a Semi-Annual Report. Each Semi-Annual Report shall include, at a minimum:

(1) A description of projects and activities completed and milestones achieved during the previous applicable six (6)-Month period pursuant to the requirements of this Consent Decree, in Gantt chart or similar format, including a description of the status of compliance or non-compliance with the requirements of this Consent Decree and, if applicable, the reasons for non-compliance. If any non-compliance cannot be fully explained at the time the report is due, the City shall include a statement to that effect in the report. The City shall investigate to determine the cause of the non-compliance and then shall submit an amendment to the report, including a full explanation of the cause of the non-compliance, within thirty (30) Days after submission of the Semi-Annual Report.

(2) A summary of significant projects and activities anticipated to be performed, and milestones anticipated to be achieved, in the successive applicable six (6)-Month period to comply with the requirements of this Consent Decree, in Gantt chart or similar format.

(3) Any additional information the City determines is appropriate to demonstrate that the City is implementing the remedial actions required under this Consent Decree in an adequate and timely manner.

c. Annual Reports. Beginning two (2) Months after the first full Calendar Year, and two (2) Months after each subsequent Calendar Year until termination of this Consent Decree, the City shall submit to the EPA for review and approval an Annual Report. Each Annual Report shall cover the most recent applicable Calendar Year and

shall include, at a minimum:

(1) A summary of the CMOM Programs implemented or modified pursuant to this Consent Decree, including a comparison of actual performance with any performance measures that have been established.

(2) A trends analysis of the number, volume, duration, and cause of the City's SSOs for the previous two Calendar Years updated to reflect the SSOs that occurred during the previous twelve (12)-Month period except that the first Annual Report shall only include the first twelve (12) Months.

39. Except as otherwise provided in the SORP or ERP, whenever any violation of this Consent Decree or any other event affecting the City's performance under this Consent Decree or its NPDES Permits may pose an immediate threat to the public health or welfare or the environment, the City shall notify, pursuant to Section [REF _Ref463351858 \n \h] (Notices), the EPA and MDEQ orally or by electronic or facsimile transmission as soon as possible, but no later than twenty-four (24) hours after the City first knew of the violation or event. This procedure is in addition to the requirements set forth in Paragraph [REF _Ref405368543 \w \h].

40. All reports shall be submitted to the persons designated in Section [REF _Ref322450461 \r \h * MERGEFORMAT] (Notices).

41. Each report by the City under this Section shall be submitted in accordance with the provisions of Paragraph [REF _Ref387046011 \w \h * MERGEFORMAT] of this Consent Decree. The certification requirement in Paragraph [REF _Ref387046011 \w \h * MERGEFORMAT] does not apply to emergency or similar notifications where compliance would be impractical, including notifications required under Paragraph [REF _Ref405368992 \w \h].

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

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

XI. **STIPULATED PENALTIES**

44. The City shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section [REF _Ref322450784 \r \h * MERGEFORMAT] (Force Majeure). A violation includes failing to

perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

45. Late Payment of Civil Penalty. If the City fails to pay the civil penalty required to be paid under Section [REF _Ref322450322 \r \h * MERGEFORMAT] (Civil Penalty) when due, the City shall pay a stipulated penalty of $1,000 per Day for each Day that the payment is late.

46. The following stipulated penalties shall accrue for each violation identified below:

a. SSOs Reaching Waters. For each SSO that reaches waters of the United States or the State, a stipulated penalty may be assessed as follows:

If SSO Occurs in:	Penalty Per Violation Per Day:
Calendar Years 2019-2021	$500
Calendar Years 2022 until Termination	$1,000

b. Failure to Timely Submit Deliverable. For each day the City fails to Timely submit any Deliverable, a stipulated penalty for each such Deliverable may be assessed as follows:

Period of Noncompliance:	Penalty Per Deliverable Per Day:
1-30 days	$500
31-60 days	$1,000
More than 60 days	$2,000

c. Failure to Timely Implement Work. For each day the City fails to Timely implement any Work, daily stipulated penalties may be assessed for each such item of Work as follows:

Period of Noncompliance:	Penalty Per Violation Per Day:
1-30 days	$500
31-60 days	$1,000
61 days -180 days	$2,000
More than 180 days	$5,000

d. Failure to Timely Report SSOs. For each SSO that the City fails to Timely report in a Quarterly Report as set forth in Paragraph [REF _Ref470788139 \w \h] of this Consent Decree, a stipulated penalty of $5,000 may be assessed.

e. Failure to Timely Implement SEP Milestones. For each Day the City fails to Timely implement a SEP milestone set forth in Section [REF _Ref475018243 \w \h] or Appendix E, daily stipulated penalties may be assessed as follows:

Period of Noncompliance:	Penalty Per Violation Per Day:
1-30 days	$500
~~31-60~~More than 30 days	$1,000

f. Failure to satisfactorily complete the SEP. For the SEP identified in Section [REF _Ref474768983 \w \h] and Appendix E, if the City fails to satisfactory complete the SEP as described, a stipulated penalty of $242,880, minus any creditable expenditures as determined by the EPA, and minus any stipulated penalties already paid under Paragraph 46.e, may be assessed.

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

48. The City shall pay any stipulated penalty within thirty (30) Days of receiving a United States' written demand. The City shall pay fifty (50) percent of the total stipulated penalty amount due to the United States and fifty (50) percent to the State.

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

50. Stipulated penalties shall continue to accrue as provided in Paragraph [REF _Ref324245385 \r \h * MERGEFORMAT], 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 the EPA, after consultation with MDEQ, and is not appealed to the Court, the City shall pay accrued penalties determined to be owing, together with interest, within thirty (30) Days of the effective date of the agreement or the receipt of the EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the City 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, the City shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

51. The City shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph [REF _Ref324245444 \r \h * MERGEFORMAT], except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. The City shall pay stipulated penalties owing to the State in the manner set forth in Paragraph [REF _Ref383433461 \w \h * MERGEFORMAT].

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

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

54. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section [REF _Ref322450868 \r \h * MERGEFORMAT] (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for the City's violation of this Decree or applicable law, including but not limited to an action against the City for statutory penalties, additional injunctive relief, mitigation or offset measures,[ADVANCE \l0][ADVANCE \d0] and/or contempt.[ADVANCE \l0] However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

XII. **FORCE MAJEURE**

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

56. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the City

shall provide notice orally or by electronic or facsimile transmission to the EPA and MDEQ, within 72 hours of when the City first knew that the event might cause a delay. Within seven (7) days thereafter, the City shall provide in writing to the EPA and MDEQ an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the City's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The City shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the City from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The City shall be deemed to know of any circumstance of which the City, any entity controlled by the City, or the City's contractors knew or should have known.

57. If the EPA, after a reasonable opportunity for review and comment by MDEQ, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the EPA, after a reasonable opportunity for review and comment by MDEQ, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

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

59. If the City elects to invoke the dispute resolution procedures set forth in Section [REF _Ref322450892 \r \h * MERGEFORMAT] (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of the EPA's notice. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs [REF _Ref324245533 \r \h * MERGEFORMAT] and [REF _Ref324245536 \r \h * MERGEFORMAT]. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Consent Decree identified to the EPA and the Court.

XIII. **DISPUTE RESOLUTION**

60. 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. The City's failure to seek resolution of a dispute under this Section shall preclude the City from raising any such issue as a defense to an action by the United States to enforce any obligation of the City arising under this Decree.

61. 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 the City sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement between the United States and the City. The United States shall consult with the State during the period of informal negotiations. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below.

62. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State 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 City's position and any supporting documentation relied upon by the City.

63. The United States shall serve its Statement of Position within sixty (60) Days of receipt of the City's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. If within five (5) Days of receiving the United States' Statement of Position, the City requests to confer, the United States agrees to confer (in person or by telephone) with the City, but such a conference shall be concluded no later than twenty-one (21) Days after the issuance of the United States' Statement of Position. Within fourteen (14) Days after the conclusion of the conference, the United States will either reaffirm its Statement of Position or issue an amended Statement of Position. If the United States fails to either reaffirm or amend its Statement of Position within this fourteen (14) Day period, its Statement of Position shall be deemed reaffirmed. The United States' Statement of Position shall be binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

64. The City may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section [REF _Ref322450461 \r \h * MERGEFORMAT] (Notices), a motion requesting judicial resolution of the dispute. If the City did not request to confer with the United States pursuant to preceding Paragraph, the City's motion must be filed within ten (10) Days of receipt of the United States' Statement of Position

pursuant to the preceding Paragraph. If the City requested to confer with the United States pursuant to the preceding Paragraph, the City's motion must be filed within ten (10) Days after the expiration of the fourteen (14) Day period following the conference during which the United States either reaffirms or amends its Statement of Position. The motion shall contain a written statement of the City's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

65. The United States shall respond to the City's motion within the time period allowed by the Local Rules of this Court. The United States shall consult with the State during preparation of its response. The City may file a reply memorandum, to the extent permitted by the Local Rules.

66. Standard of Review. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph [REF _Ref324245586 \n \h], the City shall bear the burden of demonstrating that its position complies with this Consent Decree and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and that it must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

67. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the City under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph [REF _Ref324245630 \r \h * MERGEFORMAT]. If the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section [REF _Ref322450920 \r \h * MERGEFORMAT] (Stipulated Penalties).

XIV. **INFORMATION COLLECTION AND RETENTION**

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

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;

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

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

e. assess the City's compliance with this Consent Decree.

69. Upon request, the City shall provide the EPA and MDEQ or their authorized representatives splits of any samples taken by the City. Upon request, the EPA and MDEQ shall provide the City splits of any samples taken by the EPA or MDEQ.

70. Until five (5) years after the termination of this Consent Decree, the City shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to the City's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, the City shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

71. At the conclusion of the information-retention period provided in the preceding Paragraph, the City shall notify the United States and the State at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, the City shall deliver any such documents, records, or other information to the EPA or MDEQ. The City may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the City asserts such a privilege, it shall provide the following: (a) a title for the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the City. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

72. The City may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that the City seeks to protect as CBI under 40 C.F.R. Part 2, the City shall follow the procedures set forth in 40 C.F.R. Part 2. The City may also assert that information required to be provided under this Section is protected as "trade secrets" under Miss. Code Ann. Section 49-17-39. As to any information that the City seeks to protect as trade secrets under said Section 49-17-39, the City shall follow the procedures set forth in Section 49-17-39.

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

XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

74. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging of this Consent Decree.

75. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA, the MAWPCL, or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph [REF _Ref324245690 \r \h * MERGEFORMAT]. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the City's Sewer System, whether related to the violations addressed in this Consent Decree or otherwise.

76. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Sewer System or the City's violations, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph [REF _Ref324245690 \r \h * MERGEFORMAT].

77. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The City is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the City's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, the MAWPCL, or with any other provisions of federal, State, or local laws, regulations, or permits.

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

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

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

81. 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.

XVI. **COSTS**

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

XVII. **NOTICES**

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

As to the United States:
By Mail:
EES Case Management Unit
Re: DJ # 90-5-1-1-10964
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

By Email:
[HYPERLINK "mailto:eescdcopy.enrd@usdoj.gov"] Re: DJ # 90-5-1-1-10964

And

Chief, NPDES Enforcement and Permitting Branch
Water Protection Division
U.S Environmental Protection Agency, Region 4
ATTN: Richard Elliott
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8691

As to the EPA:
Chief, NPDES Enforcement and Permitting Branch
Water Protection Division
U.S Environmental Protection Agency, Region 4
ATTN: Richard Elliott
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8691

As to the State/MDEQ:
Chief, Environmental Compliance and Enforcement Division
Office of Pollution Control
Mississippi Department of Environmental Quality
P.O. Box 2261
Jackson, MS 39225-2261
(601) 961-5682

As to the City:
Mayor, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501

Director of Engineering, City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4540

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

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

XVIII. **EFFECTIVE DATE**

86. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIX. **RETENTION OF JURISDICTION**

87. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections [REF _Ref322450968 \r \h * MERGEFORMAT] and [REF _Ref322450984 \r \h * MERGEFORMAT], or effectuating or enforcing compliance with the terms of this Decree.

XX. **MODIFICATION**

88. Except as otherwise set forth in Paragraphs [REF _Ref383531021 \w \h * MERGEFORMAT], [REF _Ref387753848 \r \h], or [REF _Ref387753878 \w \h] of this Consent Decree, 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. Non-material changes to this Consent Decree (including appendices) may be made by written agreement of the Parties without Court approval.

89. Any disputes concerning modification of this Decree shall be resolved pursuant to Section [REF _Ref322451014 \r \h * MERGEFORMAT] (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph [REF _Ref324245744 \r \h * MERGEFORMAT], 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).

XXI. **TERMINATION**

90. This Consent Decree may be terminated when the United States determines that the City has satisfactorily completed the requirements of Section [REF _Ref322451030 \r \h * MERGEFORMAT] (Compliance Requirements), provided the City has fulfilled all other obligations of this Consent Decree, including payment of the civil penalty and any accrued stipulated penalties as required by this Consent Decree not waived or reduced by the United States. The City may serve upon the United States a Request for Termination, certifying that the City has satisfied those requirements, together with all necessary supporting documentation.

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

92. If the United States, after consultation with the State, does not agree that the Decree may be terminated, the City may invoke Dispute Resolution under Section [REF

_Ref322451081 \r \h * MERGEFORMAT]. However, the City shall not seek Dispute Resolution of any dispute regarding termination until one hundred and twenty (120) Days after service of its Request for Termination.

XXII. **PUBLIC PARTICIPATION**

93. 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. The City and the State each consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the Parties in writing that it no longer supports entry of the Decree.

XXIII. **SIGNATORIES/SERVICE**

94. Each undersigned representative of the City, the State, the EPA, 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.

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

XXIV. **INTEGRATION**

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

XXV. **FINAL JUDGMENT**

97. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and the

City. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXVI. **APPENDICES**

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

"Appendix A" is a list of completed sewer improvement projects, including COMSWIP projects;

"Appendix B" is a list of the Early Action Projects;

"Appendix C" are maps of the Priority Areas;

"Appendix D" is the EPA Region 4 guidance on Capacity, Management, Operation, and Maintenance ("CMOM") programs; and

"Appendix E" is the Supplemental Environmental Project.~~, and~~

~~"Appendix F" is the list of SSOs for the initial monitoring devices.~~

Dated and entered this __ day of _____, 201_

_____
UNITED STATES DISTRICT JUDGE
Southern District of Mississippi

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE UNITED STATES OF AMERICA:

_____

BRUCE S. GELBER
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

_____

VALERIE K. MANN
DC Bar No. 440744
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611
Telephone: 202/616-8756
Facsimile: 202/616-2427
Email: Valerie.mann@usdoj.gov

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

United States Attorney
Southern District of Mississippi

_____

Assistant United States Attorney
Southern District of Mississippi
501 East Court Street
Suite 4.430
Jackson, Mississippi 39201

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

_____
MARY J. WILKES
Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Of Counsel:
WILLIAM B. BUSH, JR.
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, GA 30303

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

_____
MARK POLLINS
Division Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

_____
LOREN DENTON
Branch Chief
Municipal Enforcement Branch
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

_____
ROBERT D. FENTRESS
Attorney-Advisor
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi:

FOR PLAINTIFF STATE OF MISSISSIPPI BY AND THROUGH THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY AND THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY:

_____

GRETCHEN L. ZMITROVICH
MS Bar No. 101470
Senior Attorney
Office of Pollution Control
Mississippi Department of Environmental Quality
P.O. Box 2261
Jackson, MS 39225
Telephone: 601/961-5050
Facsimile: 601/961-5674
Email: GZMITROVICH@mdeq.ms.gov

WE HEREBY CONSENT to the entry of this Consent Decree in United States et al. v. City of Hattiesburg, Mississippi:

FOR THE CITY OF HATTIESBURG:

_____

MAYOR TOBY BARKER
Post Office Box 1898
Hattiesburg, MS 39403-1898
(601) 545-4501

Message

From: Hansen, Susan [Hansen.Susan@epa.gov]
Sent: 9/10/2019 9:21:57 PM
To: Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Armor, Suzanne [Armor.Suzanne@epa.gov]
CC: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RE: Hattiesburg

Done! Tx!

From: Rubini, Suzanne <Rubini.Suzanne@epa.gov>
Sent: Tuesday, September 10, 2019 4:26 PM
To: Palmer, Leif <Palmer.Leif@epa.gov>; Hansen, Susan <Hansen.Susan@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: RE: Hattiesburg

I'd revise it just a little. See below.

From: Palmer, Leif <Palmer.Leif@epa.gov>
Sent: Tuesday, September 10, 2019 4:09 PM
To: Hansen, Susan <Hansen.Susan@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>
Subject: RE: Hattiesburg

Yes. Susan gave me that direction 15 minutes ago.

From: Hansen, Susan <Hansen.Susan@epa.gov>
Sent: Tuesday, September 10, 2019 4:07 PM
To: Palmer, Leif <Palmer.Leif@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>
Subject: RE: Hattiesburg

Ex. 5 AC/AWP/DP

From: Palmer, Leif <Palmer.Leif@epa.gov>
Sent: Tuesday, September 10, 2019 3:27 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>

Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>; Hansen, Susan <Hansen.Susan@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>
Subject: Hattiesburg

Ex. 5 AC/AWP/DP

Leif Palmer
Regional Counsel
EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
404/562-9542 (direct)
770/856-2876 (cell)

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 9/10/2019 9:02:15 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RE: Hattiesburg

Sounds good. Thanks.

From: Ghosh, Mita <Ghosh.Mita@epa.gov>
Sent: Tuesday, September 10, 2019 4:10 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: Fwd: Hattiesburg

Ex. 5 AC/AWP/DP

Mita Ghosh, Chief
Office of Water Legal Support
USEPA Region 4
404-562-9568

Begin forwarded message:

> **From:** "Palmer, Leif" <Palmer.Leif@epa.gov>
> **Date:** September 10, 2019 at 4:03:53 PM EDT
> **To:** "Ghosh, Mita" <Ghosh.Mita@epa.gov>
> **Subject: RE: Hattiesburg**
>
> Yes.
>
> ---
>
> **From:** Ghosh, Mita <Ghosh.Mita@epa.gov>
> **Sent:** Tuesday, September 10, 2019 4:03 PM
> **To:** Palmer, Leif <Palmer.Leif@epa.gov>
> **Subject:** Re: Hattiesburg
>
> Leif,
>
> **Ex. 5 AC/AWP/DP**
>
> Mita
>
> Mita Ghosh, Chief
> Office of Water Legal Support
> USEPA Region 4

404-562-9568

On Sep 10, 2019, at 3:26 PM, Palmer, Leif <Palmer.Leif@epa.gov> wrote:

Ex. 5 AC/AWP/DP

Leif Palmer
Regional Counsel
EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
404/562-9542 (direct)
770/856-2876 (cell)

Message

From: Hansen, Susan [Hansen.Susan@epa.gov]
Sent: 9/10/2019 8:06:58 PM
To: Palmer, Leif [Palmer.Leif@epa.gov]; Armor, Suzanne [Armor.Suzanne@epa.gov]
CC: Ghosh, Mita [Ghosh.Mita@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]
Subject: RE: Hattiesburg

Ex. 5 AC/AWP/DP

From: Palmer, Leif <Palmer.Leif@epa.gov>
Sent: Tuesday, September 10, 2019 3:27 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>; Hansen, Susan <Hansen.Susan@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>
Subject: Hattiesburg

Ex. 5 AC/AWP/DP

Leif Palmer
Regional Counsel
EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
404/562-9542 (direct)
770/856-2876 (cell)

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 8/9/2019 3:51:35 PM
To: Palmer, Leif [Palmer.Leif@epa.gov]
CC: Hansen, Susan [Hansen.Susan@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; R4ORC.SPECIALASSISTANT [R4ORC.SPECIALASSISTANT@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RE: Hattiesburg
Attachments: Houston CD Approval Memo DRAFT 5.9.19_clean.docx

Ex. 5 AC/AWP/DP

From: Armor, Suzanne
Sent: Friday, August 9, 2019 10:39 AM
To: Palmer, Leif <Palmer.Leif@epa.gov>
Cc: Hansen, Susan <Hansen.Susan@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; R4ORC.SPECIALASSISTANT <R4ORC.specialassistant@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: RE: Hattiesburg

Ex. 5 AC/AWP/DP

From: Palmer, Leif <Palmer.Leif@epa.gov>
Sent: Friday, August 9, 2019 9:57 AM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Hansen, Susan <Hansen.Susan@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: Hattiesburg

Ex. 5 AC/AWP/DP

Leif Palmer
Regional Counsel
US EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
(404) 562-9542
(770) 856-2876 (cell)

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Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 8/2/2019 12:01:11 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: FW: Hattiesburg

Ex. 5 AC/AWP/DP

Thanks,
Suzanne

From: Rae, Sarah <Rae.Sarah@epa.gov>
Sent: Thursday, August 1, 2019 9:20 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: FW: Hattiesburg

FYI.

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Pollins, Mark <Pollins.Mark@epa.gov>
Sent: Thursday, August 01, 2019 4:29 PM
To: Denton, Loren <Denton.Loren@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Rae, Sarah <Rae.Sarah@epa.gov>
Subject: Fwd: Hattiesburg

Sent from my iPhone

Begin forwarded message:

From: "Rubini, Suzanne" <Rubini.Suzanne@epa.gov>
Date: August 1, 2019 at 4:00:44 PM EDT
To: "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Koslow, Karin" <Koslow.Karin@epa.gov>, "Porter, Amy" <Porter.Amy@epa.gov>, "Pollins, Mark" <Pollins.Mark@epa.gov>, "Palmer, Leif" <Palmer.Leif@epa.gov>
Cc: "Bodine, Susan" <bodine.susan@epa.gov>, "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Traylor, Patrick" <traylor.patrick@epa.gov>
Subject: RE: Hattiesburg

Ex. 5 AC/AWP/DP

Thanks,
Suzanne

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Thursday, August 1, 2019 2:27 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>
Cc: Bodine, Susan <bodine.susan@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: Hattiesburg

Ex. 5 AC/AWP/DP

Larry

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Message

From: Palmer, Leif [Palmer.Leif@epa.gov]
Sent: 8/30/2019 3:02:40 AM
To: Armor, Suzanne [Armor.Suzanne@epa.gov]
CC: Ghosh, Mita [Ghosh.Mita@epa.gov]; Hansen, Susan [Hansen.Susan@epa.gov]; R4ORC.SPECIALASSISTANT [R4ORC.SPECIALASSISTANT@epa.gov]
Subject: FW: Hattiesburg
Attachments: Hattiesburg CWA Consent Decree RA Briefing Sheet. 8 26 19.pdf; ATT00001.htm

Ex. 5 AC/AWP/DP

Let's talk on Tuesday.

From: Palmer, Leif
Sent: Wednesday, August 28, 2019 2:23 PM
To: Gordon, Scott <Gordon.Scott@epa.gov>
Subject: Fwd: Hattiesburg

Sent from my iPhone

Begin forwarded message:

> **From:** "Palmer, Leif" <Palmer.Leif@epa.gov>
> **Date:** August 26, 2019 at 1:24:26 PM EDT
> **To:** "Walker, Mary" <walker.mary@epa.gov>
> **Cc:** "ashbee.blake@epa.gov" <ashbee.blake@epa.gov>, "Banister, Beverly" <Banister.Beverly@epa.gov>, "Armor, Suzanne" <Armor.Suzanne@epa.gov>, "Rubini, Suzanne" <Rubini.Suzanne@epa.gov>, "Ghosh, Mita" <Ghosh.Mita@epa.gov>
> **Subject: Hattiesburg**

Ex. 5 AC/AWP/DP

Leif Palmer
Regional Counsel
US EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
(404) 562-9542
(770) 856-2876 (cell)

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Message

From: Palmer, Leif [Palmer.Leif@epa.gov]
Sent: 8/26/2019 4:03:53 PM
To: Armor, Suzanne [Armor.Suzanne@epa.gov]
CC: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: Hattiesburg
Attachments: Hattiesburg CWA Consent Decree RA Briefing Sheet. 8 26 19.docx

Please let me know your thoughts; I'd like to send this to Mary later today.

Leif Palmer
Regional Counsel
US EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
(404) 562-9542
(770) 856-2876 (cell)

This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 7/19/2019 4:38:45 PM
To: Palmer, Leif [Palmer.Leif@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RE: Hattiesburg SEP

Ex. 5 Attorney Client (AC)

From: Palmer, Leif
Sent: Friday, July 19, 2019 11:52 AM
To: Ghosh, Mita <Ghosh.Mita@epa.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: Re: Hattiesburg SEP

Ex. 5 Attorney Client (AC)

Sent from my iPhone

On Jul 19, 2019, at 11:42 AM, Ghosh, Mita <Ghosh.Mita@epa.gov> wrote:

Suzanne,

Ex. 5 Attorney Client (AC)

Mita Ghosh
Chief, Office of Water Legal Support
Office of Regional Counel
United States Environmental Protection
Region 4
404-562-9568

NOTICE: This communication may contain privileged or other confidential information. If you are not the intended recipient, or believe that you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use the information. Also, please indicate to the sender that you have received this communication in error, and delete the copy you received.

From: Rae, Sarah
Sent: Friday, July 19, 2019 9:14 AM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>

Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>; Bush, William <Bush.William@epa.gov>; Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Subject: FW: Hattiesburg SEP

Good morning Suzanne,

Ex. 5 Deliberative Process (DP)

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Pollins, Mark
Sent: Friday, July 19, 2019 9:07 AM
To: Rae, Sarah <Rae.Sarah@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; King, Carol <King.Carol@epa.gov>
Subject: Fwd: Hattiesburg SEP

Sent from my iPhone

Begin forwarded message:

> **From:** "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>
> **Date:** July 19, 2019 at 8:52:50 AM EDT
> **To:** "Palmer, Leif" <Palmer.Leif@epa.gov>
> **Cc:** "Pollins, Mark" <Pollins.Mark@epa.gov>
> **Subject: Hattiesburg SEP**
>
> Leif-
>
> **Ex. 5 Deliberative Process (DP)**
>
> Give me a call if you'd like to discuss.
>
> Rosemarie
>
> Regards,
> Rosemarie A. Kelley, Director
> Office of Civil Enforcement
> Office of Enforcement and Compliance Assurance
> 202-564-4014

Message

From: Palmer, Leif [Palmer.Leif@epa.gov]
Sent: 10/7/2019 10:54:15 PM
To: Armor, Suzanne [Armor.Suzanne@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]
CC: Hansen, Susan [Hansen.Susan@epa.gov]; R4ORC.SPECIALASSISTANT [R4ORC.SPECIALASSISTANT@epa.gov]
Subject: RE: yes, good news re Kronospan and ABC Coke SEPs

Ex. 5 AC/AWP/DP

From: Friedman, Henry (ENRD) <Henry.Friedman@usdoj.gov>
Sent: Monday, October 7, 2019 6:51 PM
To: Palmer, Leif <Palmer.Leif@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Nowell, Valerie <Nowell.Valerie@epa.gov>
Subject: yes, good news re Kronospan and ABC Coke SEPs

Dear Leif, Suzanne and Valerie,

Ex. 5 AC/AWP/DP

Thanks very much for your patience.

Best,

Henry

Henry S. Friedman
Assistant Section Chief | Environmental Enforcement Section | Environment Division
U.S. Department of Justice
Mailing Address: P.O. Box 7611 Ben Franklin Station, Washington, D.C. 20044
Phone: 202-514-5268 | Email: Henry.friedman@usdoj.gov

Message

From: Stopper, Nathan [stopper.nathan@epa.gov]
Sent: 5/15/2019 7:00:55 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]; Armor, Suzanne [Armor.Suzanne@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Schwarz, Matthew [Schwarz.Matthew@epa.gov]; Wetherington, Michele [Wetherington.Michele@epa.gov]; Nagrani, Kavita [Nagrani.Kavita@epa.gov]; Beckwith, Natalie [Beckwith.Natalie@epa.gov]; Johnson, Patrick [johnson.patrick@epa.gov]; Stopper, Nathan [stopper.nathan@epa.gov]
Subject: NPDES Compliance & Enforcement Managers' Call Notes
Attachments: Priority Approaches for Reducing SNC Rate 042519.docx

My notes from today's call:

1. SNC NCI Update
    - Report out on Atlanta conference – EPA/State conference was held in Atlanta, someone from each region and 16 states attended. Sounds like it was successful.
    - Request to participate in Regions' annual meetings with states – HQ wants to send someone down to each Region's annual meeting.
    - There was an overview of the attached draft "Priority Approaches" paper. It's very much still in draft form.
2. PWSS/NPDES national meetings – Week of Sept 9th in Region 2.
3. Ex. 5 AC/DP
4. Ex. 5 Attorney Client (AC)

Nathan H. Stopper
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Office of Regional Counsel
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
Phone: (404) 562-9581
Fax: (404) 562-9487

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Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 9/24/2019 3:07:10 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RE: RA Weekly Items - week of 9/23/19 - changes highlighted

Modified to add Ex. 5 AC/AWP/DP

From: Armor, Suzanne
Sent: Tuesday, September 24, 2019 9:08 AM
To: Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: RA Weekly Items - week of 9/23/19 - changes highlighted

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 7/16/2019 1:12:12 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RE: RA Weekly Items - week of 7/15/19 - changes highlighted

Edited to update Revelation Energy.

From: Armor, Suzanne
Sent: Tuesday, July 16, 2019 8:46 AM
To: Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: RA Weekly Items - week of 7/15/19 - changes highlighted

NEPA Training. I will participate in NEPA Training on Tuesday, July 16, 2019.

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 5/7/2019 2:06:52 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RA Weekly Items - week of 5/6/19 - changes highlighted

Ex. 5 AC/AWP/DP, Ex. 7(a)

Ex. 5 AC/AWP/DP, Ex. 7(a)

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 8/5/2019 3:51:33 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RA Weekly Items - week of 8/5/19 - changes highlighted

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 5/21/2019 5:10:56 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RA Weekly Items - week of 5/20/19 - changes highlighted

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 10/1/2019 1:04:46 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RA Weekly Items - week of 9/30/19 - changes highlighted

Ex. 5 AC/AWP/DP, Ex. 7(a)

Ex. 5 AC/AWP/DP, Ex. 7(a)

Ex. 5 AC/AWP/DP, Ex. 7(a)

Ex. 5 AC/AWP/DP, Ex. 7(a)

Message

From: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
Sent: 5/1/2019 9:02:49 PM
To: Armor, Suzanne [Armor.Suzanne@epa.gov]
CC: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RE: City of Hattiesburg - draft SSOs CD

Ex. 5 AC/AWP/DP

From: Armor, Suzanne <Armor.Suzanne@epa.gov>
Sent: Wednesday, May 1, 2019 4:59 PM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: RE: City of Hattiesburg - draft SSOs CD

Ex. 5 AC/AWP/DP

Thanks,
Suzanne

From: John Milner <jmilner@brunini.com>
Sent: Wednesday, May 1, 2019 4:55 PM
To: 'Mann, Valerie (ENRD)' <Valerie.Mann@usdoj.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Gene Wasson <gwasson@brunini.com>
Subject: City of Hattiesburg - draft SSOs CD

Valerie and Suzanne,

The City provides the following replies to your April 22, 2019 e-mail, which responded to the City's April 15, 2019 comments. For each of the three remaining open language issues concerning CD Paragraphs 23, 41 and 7, I provide below for each (1) the City's 4/15/19 comment, (2) EPA's 4/22/19 response and (3) the City's 5/1/19 reply:

1. Paragraph 23 - City's 4/15/19 comment: In Paragraph 23, we propose to insert before the second sentence the following: "Consistent with Paragraph 8.h". Our position is that it is important to keep in Paragraph 23 a statement that the CD controls over the appendix.

   4/22/19 EPA response: EPA approved the City's proposed change.

   City's reply: The City appreciates EPA's approval of the City's requested change to Paragraph 23.

2. Paragraph 41 - City's 4/15/19 comment: We propose to except notifications under Paragraph 39 from the posting requirement of Paragraph 41 because of the undue burden of filing and maintaining numerous reports under Paragraph 39 that will be available otherwise in the PDR via the reports under Paragraph 38.

   4/22/19 EPA response: Para 41, see EPA's proposed wording in red "to accommodate City's request":

   41. Each report by the City under this Section shall be submitted in accordance with the provisions of Paragraph 17 of this Consent Decree. The certification requirement in Paragraph 17 does not apply to emergency or similar notifications where compliance would be

impractical, including notifications required under Paragraph 39. ~~In addition, a copy of all reports submitted pursuant to this Section (X. Reporting Requirements) shall also be made available to the public in the PDR.~~ In addition, a copy of all Quarterly Reports, Semi-Annual Reports, and Annual Reports submitted pursuant to Section X (Reporting Requirements) shall be made available to the public in the PDR.

City's reply: The City accepts and appreciates EPA's modification of Paragraph 41.

3. Paragraph 7 - City's 4/15/19 comment: The City proposes to replace the underlined "all" with the following language from Paragraph 20: "conditions that cause or are likely to cause." This phrase clarifies the goal in a manner that is consistent within the CD and more realistically achievable by the City.

   4/22/19 EPA response: City's proposed change is unacceptable since it is "not consistent with other muni CDs."

   City's reply: The City accepts EPA's position with regard to Paragraph 7.

I believe that the resolution of the issues concerning Paragraphs 23, 41 and 7 above allows the draft CD to be finalized. The City is updating the Appendices to the CD. I will be able to send these revised Appendices to you by next Wednesday, May 8, for your review and comment.

Please let me know if you have any questions. Thanks

John

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

BRUNINI

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Message

From: Hicks, Matt [Hicks.Matthew@epa.gov]
Sent: 7/3/2019 2:31:39 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: Ex. 5 AC/DP

Great. Thanks Mita.

From: Ghosh, Mita
Sent: Wednesday, July 3, 2019 10:30 AM
To: Hicks, Matt <Hicks.Matthew@epa.gov>
Subject: RE: Ex. 5 AC/DP

That is correct, Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Mita Ghosh
Chief, Office of Water Legal Support
Office of Regional Counel
United States Environmental Protection
Region 4
404-562-9568

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From: Hicks, Matt
Sent: Wednesday, July 3, 2019 10:29 AM
To: Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: FW: Ex. 5 AC/DP

Mita,

Ex. 5 AC/DP

Ex. 5 Attorney Client (AC)

Is there anything else we're waiting on?

From: Hicks, Matt
Sent: Monday, July 1, 2019 3:31 PM
To: Nowell, Valerie <Nowell.Valerie@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Michuda, Colleen E. <Michuda.Colleen@epa.gov>; Redleaf-Durbin, Joan <Redleaf-Durbin.Joan@epa.gov>
Cc: Palmer, Leif <Palmer.Leif@epa.gov>; Hansen, Susan <Hansen.Susan@epa.gov>
Subject: FW: Ex. 5 AC/DP

Valerie, Mita, Colleen, and Joan,

Ex. 5 AC/DP We already know about Ex. 5 Attorney Client (AC) Ex. 5 Attorney Client (AC) but please let me know about anything else.

Thanks,

Matt

From: Palmer, Leif
Sent: Monday, July 1, 2019 3:25 PM
To: Hicks, Matt <Hicks.Matthew@epa.gov>
Subject: Fwd: Ex. 5 AC/DP

Sent from my iPhone

Begin forwarded message:

> **From:** "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>
> **Date:** July 1, 2019 at 3:23:50 PM EDT
> **To:** Regional Counsels and Deputies <Regional_Counsels_and_Deputies@epa.gov>
> **Cc:** "Koslow, Karin" <Koslow.Karin@epa.gov>
> **Subject:** Ex. 5 AC/DP
>
> Regional Counsels,
>
> Ex. 5 AC/DP
>
> Rosemarie
>
> Regards,
> Rosemarie A. Kelley, Director
> Office of Civil Enforcement
> Office of Enforcement and Compliance Assurance
> 202-564-4014

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 7/3/2019 12:38:45 PM
To: Shirley, Teresa [Shirley.Teresa@epa.gov]
CC: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: Ex. 5 AC/DP

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ATTORNEY-CLIENT COMMUNICATION
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Ex. 5 AC/AWP/DP

SUZANNE K. ARMOR | ATTORNEY-ADVISOR
United States Environmental Protection Agency
Office of Regional Counsel
Office of Water Legal Support
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
tel: 404.562.9701
fax: 404.562.8078
armor.suzanne@epa.gov

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From: Shirley, Teresa
Sent: Tuesday, July 2, 2019 2:22 PM
To: R4 ORC Legal-Attorneys <R4_ORC_Legal-Attorneys@epa.gov>
Subject: Update on Referrals

If you have a case on this list, please provide me with a brief update:

Ex. 5 AC/AWP/DP

Thanks,

Teresa Shirley
404-562-9647
For ICIS Information: http://r4intra.epa.gov/orc/icis.html
For OSMS Dashboard: http://intranet.epa.gov/oeca/oc/etdd/fecdashboard/index.html

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 7/30/2019 4:00:09 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RA Weekly Items - week of 7/29/19 - changes highlighted

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 7/1/2019 4:18:03 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RA Weekly Items - week of 7/1/19 - changes highlighted

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 4/24/2019 8:42:39 PM
To: Mann, Valerie (ENRD) [Valerie.Mann@usdoj.gov]
CC: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RE: Hattiesburg SEP?

Thank you.

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Wednesday, April 24, 2019 4:41 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: RE: Hattiesburg SEP?

Ex. 5 AC/AWP/DP

From: Armor, Suzanne <Armor.Suzanne@epa.gov>
Sent: Wednesday, April 24, 2019 4:33 PM
To: Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: Hattiesburg SEP?

Hi, Valerie –

Ex. 5 AC/AWP/DP

Thanks,
Suzanne

SUZANNE K. ARMOR | ATTORNEY-ADVISOR
United States Environmental Protection Agency
Office of Regional Counsel
Office of Water Legal Support
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
tel: 404.562.9701
fax: 404.562.8078
armor.suzanne@epa.gov

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Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 8/27/2019 11:52:27 AM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RA Weekly Items - week of 8/26/19 - changes highlighted

Ex. 5 AC/AWP/DP, Ex. 7(a)

Ex. 5 AC/AWP/DP, Ex. 7(a)

Ex. 5 AC/AWP/DP, Ex. 7(a)

Ex. 5 AC/AWP/DP, Ex. 7(a)

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 6/25/2019 12:50:51 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RA Weekly Items - week of 6/24/19 - changes highlighted

Pretreatment 101 Training Seminar. On Monday, June 24 and Tuesday, June 25, I will be attending the National Industrial Pretreatment Program seminar hosted by Region 4 ECAD and HQ's Office of Water.

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 6/18/2019 2:17:53 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RA Weekly Items - week of 6/17/19 - changes highlighted

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Armor, Suzanne [Armor.Suzanne@epa.gov]
Sent: 6/10/2019 8:19:49 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RA Weekly Items - week of 6/10/19 - changes highlighted

Ex. 5 AC/AWP/DP, Ex. 7(a)

Ex. 5 AC/AWP/DP, Ex. 7(a)

Ex. 5 AC/AWP/DP, Ex. 7(a)

Message

From: Ghosh, Mita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A452A12681164ADA8730786F1A908E32-GHOSH, MITA]
Sent: 9/10/2019 8:10:01 PM
To: Palmer, Leif [Palmer.Leif@epa.gov]
Subject: Re: Hattiesburg

Thanks

Mita Ghosh, Chief
Office of Water Legal Support
USEPA Region 4
404-562-9568

On Sep 10, 2019, at 4:03 PM, Palmer, Leif <Palmer.Leif@epa.gov> wrote:

Yes.

From: Ghosh, Mita <Ghosh.Mita@epa.gov>
Sent: Tuesday, September 10, 2019 4:03 PM
To: Palmer, Leif <Palmer.Leif@epa.gov>
Subject: Re: Hattiesburg

Leif,

Ex. 5 AC/AWP/DP

Mita

Mita Ghosh, Chief
Office of Water Legal Support
USEPA Region 4
404-562-9568

On Sep 10, 2019, at 3:26 PM, Palmer, Leif <Palmer.Leif@epa.gov> wrote:

Ex. 5 AC/AWP/DP

Leif Palmer
Regional Counsel

EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
404/562-9542 (direct)
770/856-2876 (cell)

Message

From: Ghosh, Mita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A452A12681164ADA8730786F1A908E32-GHOSH, MITA]
Sent: 5/8/2019 1:36:53 PM
To: Hansen, Susan [Hansen.Susan@epa.gov]
Subject: RE: Mita - - what items are highest importance for leif/RA's office in your weekly?

Hot Issues

Ex. 5 AC/AWP/DP, Ex. 7(a)

Ex. 5 AC/AWP/DP, Ex. 7(a)

Mita Ghosh
Chief, Office of Water Legal Support
Office of Regional Counel
United States Environmental Protection
Region 4
404-562-9568

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From: Hansen, Susan
Sent: Wednesday, May 8, 2019 9:22 AM
To: Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: Mita - - what items are highest importance for leif/RA's office in your weekly?

Message

From: Ghosh, Mita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A452A12681164ADA8730786F1A908E32-GHOSH, MITA]
Sent: 9/10/2019 5:18:37 PM
To: Hicks, Matt [Hicks.Matthew@epa.gov]
Subject: Re: RNCF updates for Suzanne

Ex. 5 AC/AWP/DP

Mita Ghosh, Chief
Office of Water Legal Support
USEPA Region 4
404-562-9568

On Sep 10, 2019, at 12:05 PM, Hicks, Matt <Hicks.Matthew@epa.gov> wrote:

Ex. 5 AC/AWP/DP

From: Ghosh, Mita <Ghosh.Mita@epa.gov>
Sent: Monday, September 9, 2019 4:23 PM
To: Hicks, Matt <Hicks.Matthew@epa.gov>
Subject: Re: RNCF updates for Suzanne

Matt,

I just saw this. Suzanne is responding with some updates. We were not able to update by your deadline.

Mita

Mita Ghosh, Chief
Office of Water Legal Support
USEPA Region 4
404-562-9568

On Sep 9, 2019, at 9:40 AM, Hicks, Matt <Hicks.Matthew@epa.gov> wrote:

Mita,

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

To: Palmer, Leif[Palmer.Leif@epa.gov]; Hansen, Susan[Hansen.Susan@epa.gov]; Ghosh, Mita[Ghosh.Mita@epa.gov]; R4ORC.SPECIALASSISTANT[R4ORC.SPECIALASSISTANT@epa.gov]; Rubini, Suzanne[Rubini.Suzanne@epa.gov]; Gordon, Scott[Gordon.Scott@epa.gov]
Cc: Bragan, Mary Jo[Bragan.Maryjo@epa.gov]; Castillo, Jairo[Castillo.Jairo@epa.gov]; Rae, Sarah[Rae.Sarah@epa.gov]; Elliott, Richard[Elliott.Richard@epa.gov]; Sayre, Dennis[Sayre.Dennis@epa.gov]; Janovitz, Sara[Janovitz.Sara@epa.gov]; O'Lone, Dan[Olone.Dan@epa.gov]; Beckwith, Natalie[Beckwith.Natalie@epa.gov]; Hicks, Matt[Hicks.Matthew@epa.gov]; Johnson, Patrick[johnson.patrick@epa.gov]; Nagrani, Kavita[Nagrani.Kavita@epa.gov]; Schwartz, Paul[Schwartz.Paul@epa.gov]; Smith, Stephen[Smith.Stephen@epa.gov]; Stopper, Nathan[stopper.nathan@epa.gov]; Wetherington, Michele[Wetherington.Michele@epa.gov]
From: Armor, Suzanne[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=357FFF925F824E58A28F6D7B6340E1B2-ARMOR, SUZANNE]
Sent: Wed 8/21/2019 5:51:28 PM (UTC)
Subject: FW: Hattiesburg/ AAG memo on using SEPs in settlements with state and local governments
enrd_state_and_local_sep_memo_public_8_21_19.pdf

FYI, in case you haven't seen this yet.

From: Mann, Valerie (ENRD) <Valerie.Mann@usdoj.gov>
Sent: Wednesday, August 21, 2019 1:40 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: Hattiesburg/ AAG memo on using SEPs in settlements with state and local governments

Please see the attached memo from the AAG, posted on the ENRD website today,
https://www.justice.gov/enrd/selected-documents\
concerning the use of SEPs in settlements with state and local governments.

Message

From: Rubini, Suzanne [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1BD777D6AB434A339122BFDD62491D0C-RUBINI, SUZANNE]
Sent: 6/14/2019 12:55:13 PM
To: Bush, William [Bush.William@epa.gov]
CC: Gordon, Scott [Gordon.Scott@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]
Subject: Re: Hattiesburg SEP

Thanks Bill.

Sent from my iPhone

On Jun 3, 2019, at 5:23 PM, Bush, William <Bush.William@epa.gov> wrote:

Ex. 5 Deliberative Process (DP)

From: Gonzalez, Sarah
Sent: Monday, June 3, 2019 4:31 PM
To: Bush, William <Bush.William@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: Hattiesburg SEP

Suzanne and Bill,

First, welcome back to enforcement Bill! Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

I hope this helps clarify. Give me a call if you have any further questions!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

It is important to think beyond yourself.

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Message

From: Bragan, Mary Jo [Bragan.Maryjo@epa.gov]
Sent: 5/15/2019 9:39:15 PM
To: Rae, Sarah [Rae.Sarah@epa.gov]; Armor, Suzanne [Armor.Suzanne@epa.gov]
CC: Sayre, Dennis [Sayre.Dennis@epa.gov]; Elliott, Richard [Elliott.Richard@epa.gov]; Bragan, Mary Jo [Bragan.Maryjo@epa.gov]; Stopper, Nathan [stopper.nathan@epa.gov]
Subject: RE: NPDES Compliance & Enforcement Managers' Call Notes

Sarah and Suzanne –

I can give you the details on what was discussed on the call today. During the call, Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

If you have any additional questions, please feel free to contact me directly.

Thanks –
Mary Jo
404-562-9275

From: Chavez, Araceli
Sent: Wednesday, May 15, 2019 4:49 PM
To: Bragan, Mary Jo <Bragan.Maryjo@epa.gov>
Subject: FW: NPDES Compliance & Enforcement Managers' Call Notes
Importance: High

Ex. 5 Attorney Client (AC)

Thank you,

Araceli Chavez
Acting Chief, Drinking Water & Wastewater Section
Water Enforcement Branch
Enforcement and Compliance Assurance Division
USEPA-Region 4
61 Forsyth Street, 15th Floor
Atlanta, GA 30303
404-562-9790
chavez.araceli@epa.gov

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From: Gonzalez, Sarah
Sent: Wednesday, May 15, 2019 4:39 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Cc: Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Chavez, Araceli <Chavez.Araceli@epa.gov>
Subject: RE: NPDES Compliance & Enforcement Managers' Call Notes

Thanks Suzanne, I will ask Loren about this discussion.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Armor, Suzanne
Sent: Wednesday, May 15, 2019 4:33 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Cc: Sayre, Dennis <Sayre.Dennis@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Chavez, Araceli <Chavez.Araceli@epa.gov>
Subject: FW: NPDES Compliance & Enforcement Managers' Call Notes

FYI – **Ex. 5 Attorney Client (AC)** I was not on the call, so I don't know what was said other than what Nate's notes indicate.

From: Stopper, Nathan
Sent: Wednesday, May 15, 2019 3:11 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: NPDES Compliance & Enforcement Managers' Call Notes

Mary Jo and Loren Denton, I think.

From: Armor, Suzanne
Sent: Wednesday, May 15, 2019 3:04 PM
To: Stopper, Nathan <stopper.nathan@epa.gov>
Subject: RE: NPDES Compliance & Enforcement Managers' Call Notes

Thanks, Nate. Who from OECA or the Region talked about Hattiesburg? (Just curious).

From: Stopper, Nathan
Sent: Wednesday, May 15, 2019 3:01 PM
To: Ghosh, Mita <Ghosh.Mita@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Schwarz, Matthew <Schwarz.Matthew@epa.gov>; Wetherington, Michele <Wetherington.Michele@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Beckwith, Natalie

<Beckwith.Natalie@epa.gov>; Johnson, Patrick <johnson.patrick@epa.gov>; Stopper, Nathan <stopper.nathan@epa.gov>
Subject: NPDES Compliance & Enforcement Managers' Call Notes

My notes from today's call:

1. SNC NCI Update
    - Report out on Atlanta conference – EPA/State conference was held in Atlanta, someone from each region and 16 states attended. Sounds like it was successful.
    - Request to participate in Regions' annual meetings with states – HQ wants to send someone down to each Region's annual meeting.
    - There was an overview of the attached draft "Priority Approaches" paper. It's very much still in draft form.
2. PWSS/NPDES national meetings – Week of Sept 9th in Region 2.
3. Consent Decree Modifications – OECA is discussing a standard CD modification template with DOJ now. Hoping to get a draft out by September.
4. Consent Decrees and SEPs - OECA is also hoping to get additional info from DOJ regarding the effects of the Sessions memo and the feasibility of SEPs. HQ is working hard on getting CDs through DOJ, including Hattiesburg, but everything is day to day now, especially when there are SEPs. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Nathan H. Stopper
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Office of Regional Counsel
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
Phone: (404) 562-9581
Fax: (404) 562-9487

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Message

From: Bush, William [Bush.William@epa.gov]
Sent: 5/8/2017 3:43:20 PM
To: Elliott, Richard [Elliott.Richard@epa.gov]; Sayre, Dennis [Sayre.Dennis@epa.gov]; Fentress, Robert [Fentress.Robert@epa.gov]
Subject: FW: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables
Attachments: 11217_Appendix C1.pdf; 11217_Appendix C2.pdf; 11217_Appendix C3.pdf; Appendix A Map.pdf; Appendix B Map.pdf; Appendix A Rev.pdf; Appendix B Rev.pdf; Appendix C Rev.pdf; Public Participation(Chinika)- Layout.pptx

---

From: John Milner [mailto:jmilner@brunini.com]
Sent: Tuesday, May 02, 2017 6:22 PM
To: 'Mann, Valerie (ENRD)' <Valerie.Mann@usdoj.gov>
Cc: Bush, William <Bush.William@epa.gov>
Subject: City of Hattiesburg - draft SSO consent decree - response to action items and provision of available deliverables

Valerie,

Please see the following responses to your prior action item requests and the attached deliverables that are currently available:

1. The City has asked to submit a letter to EPA and MDEQ setting forth its request and justification for a payment plan for the penalty. If City wants to pursue this, send ASAP. It would be helpful to provide as much detail as possible as to why the City feels this is necessary and the specific payment details regarding the number and timing of installments.

   The City will provide a letter by May 17 which requests a payment plan in four equal installments during the following four months over the next two fiscal years:

   November, 2017
   May, 2018
   November, 2018
   May, 2019

2. The City will consider voluntarily submitting the SORP and ERP earlier than the current deadline set forth in the CD.

   The City is in the process of preparing the SORP and ERP and is definitely considering the voluntary submission of the SORP and ERP earlier than the CD deadline.

3. DOJ has proofed Appendices A, B and C and raised one suggested edit/question re boring. City owes a response.

   See the attached revised Appendices A, B and C.

4. The City will revise maps C -1 to label a portion of sewershed 36 and will revise C-2 to label a portion of sewershed 44.

   See the attached revised maps.

5. The City will correct the typo in paragraph 11 of Appendix A.

See the attached revised Appendix A.

6. The City will remove the dates under the title pages of Appendices A, B and C.

   See the attached revised Appendices A, B and C.

7. The City will send out a complete set of Appendices A, B and C once these final changes are made.

   See the attached revised Appendices A, B and C.

8. The EPA will send out a markup of Appendix E for the SEP.

   The City has reviewed the DOJ April 5 markup of the Appendix E for the SEP and has no changes to propose to the markup.

9. The City will contemplate a proposal for an appropriate deadline for SEP completion and schedule for escrow account deposits.

   The City will provide this proposal by May 17.

10. The City will send out the SSO list in an excel spreadsheet (John, Bill B could not find an email where you sent that already so please resend).

    This list will be sent to you, as well as additional documents, tomorrow (May 3) after a meeting in Hattiesburg with the City team.

11. The City will submit to the EPA and MDEQ a summary of its community engagement efforts to date.

    A summary will be provided by May 10, which will reflect the following community engagement meetings:

    East Jerusalem Neighborhood association on 4/14/16
    Arcadia sunset neighborhood association meeting on 4/21/16
    Parkhaven neighborhood association meeting on 6/9/16
    Grace Christian Neighborhood on 8/11/16 at 6pm
    The Avenues Neighborhood Association on 8/22/16 at 6pm
    The Cottages Neighborhood Association on 11/01/16 at 6pm
    Highland Neighborhood Association on 11/14/16 at 6 pm (Reggie Barrino was in attendance)

    Please see the attached power point presentation that was presented at these meetings.

12. The City will submit draft language for new Paragraph 23.k – Chronic SSO Advanced Monitoring Program to replace current Paragraph 23.a.(6) using EPA's original language as much as possible.

    The City team is meeting tomorrow and next week to address this issue and will submit proposed language for this provision by May 17.

13. The City will provide to DOJ the information for whom penalty payment instructions should be sent as set forth in Paragraph 26 of the CD.

    The City will provide these instructions by May 17.

Valerie, in addition to these action items, as I have mentioned to you and Bill earlier, the City is reviewing the Capacity Assurance Program provisions of the CD, Paragraph 23.i (pp. 35 – 40 of your latest CD redlined draft) and will provide comments on issues related to these provisions by May 17 after meetings tomorrow and next week.

If you have any questions concerning this message or the attachments, please feel free to contact me. Thanks

John

John E. Milner
E: jmilner@brunini.com
P: 601-960-6842 F: 601-960-6902

BRUNINI

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www.brunini.com
Bio / V-Card

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Message

From: Sayre, Dennis [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31D19C52C8B04C0F9CDECEB3F2CA3EEA-SAYRE, DENNIS]
Sent: 1/23/2018 7:29:17 PM
To: Bush, William [Bush.William@epa.gov]
Subject: RE: Hattiesburg CD

Thumbs up!

Dennis J. Sayre ¦ Environmental Engineer ¦ Inspector
NPDES Permitting and Enforcement Branch ¦ Municipal & Industrial Enforcement Section
(404) 562-9756

Mailing Address:
EPA - Water Protection Division
Attn: Dennis Sayre
61 Forsyth Street SW, 9T25
Atlanta, Georgia 30303

From: Bush, William
Sent: Tuesday, January 23, 2018 1:31 PM
To: jmilner@brunini.com
Cc: Bill Weinischke <bill.weinischke@usdoj.gov>; Gretchen Zmitrovich <GZMITROVICH@mdeq.ms.gov>; Horsey, Maurice <Horsey.Maurice@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Sayre, Dennis <Sayre.Dennis@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Bush, William <Bush.William@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Hattiesburg CD

John,

Thanks to you, the Mayor and the rest of the City team for the call on Wednesday, December 6. And we appreciate after years of negotiating the CD that the City in your October 16, 2017 email has narrowed down its final comments on the draft CD to its proposal to delete the CAP, the Hydraulic Model Program and Paragraph 20.d. We have considered your proposal and the information discussed during the call and reviewed the information provided to us by the City depicting the direction of sewage flow from the areas of potential growth in the community (the Westside Corridor). As a result and assuming we get confirmation from the City in the very near future that our negotiations have finally come to an end, our response to your October 16, 2017 email follows:

1. We will delete the CAP from the CD.
2. As I think we all agreed during our call, the City may have to develop some form of hydraulic model to properly make rehabilitation decisions to eliminate and prevent capacity-related SSOs in the Priority Areas. However, we are also amenable to deleting the specific requirement in the CD to develop a comprehensive model program subject our review. Because we deleted the Model Program, we made corresponding changes in Paragraph 21 to substitute references to the specifically required Model to references to any model that the City may implement.
3. We are also amenable to deleting Paragraph 20.d. as you requested. We have revised Paragraph 20.c. to acknowledge that the City may use hydraulic model results based on flow monitoring data in performing its assessment and making rehab decisions for the Priority Areas. Because we are proposing to delete the CAP and the requirement to develop a Hydraulic Model Program subject to EPA review and approval, we do not think the City should object to this revision which simply reflects what the City will necessarily have to do to address its capacity-related SSOs.

These proposed changes ae reflected in the attached, revised draft of the CD. We also made some minor word changes reflecting comments we received from our upper management.

Finally, EPA HQs asked that we add a sentence to the SEP appendix clarifying that the escrow account is being set up "to ensure resources are available to fund the SEP for financial assurance purposes." I trust that this will not cause you any heartburn.

We look forward to hearing back from you as soon as possible so that we can finally conclude these negotiations. We recognize of course that final approval of the CD by the City's will require consultation/approval from from the City Council. Similarly, final approval of the draft CD on part is caveated upon obtaining sign off from upper management within EPA, MDEQ and DOJ.

Message

From: Bragan, Mary Jo [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=860D1A46EC2349858C5588B0AF12E1F3-BRAGAN, MARY]
Sent: 6/13/2019 9:39:07 PM
To: Bush, William [Bush.William@epa.gov]
Subject: RE: Hattiesburg SEP

Thanks. I'll keep my fingers crossed.

From: Bush, William
Sent: Thursday, June 13, 2019 5:29 PM
To: Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Gordon, Scott <Gordon.Scott@epa.gov>; Kemker, Carol <Kemker.Carol@epa.gov>; Bragan, Mary Jo <Bragan.Maryjo@epa.gov>; Chavez, Araceli <Chavez.Araceli@epa.gov>; Elliott, Richard <Elliott.Richard@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Hansen, Susan <Hansen.Susan@epa.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: FW: Hattiesburg SEP

Fyi – update from OECA. Hopefully we'll hear soon.

From: Rae, Sarah
Sent: Thursday, June 13, 2019 5:27 PM
To: Bush, William <Bush.William@epa.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: Hattiesburg SEP

Suzanne and Bill,

We just spoke with Susan and she plans to put this on Monday agenda for her meeting with Jeff Clark to discuss. Both Loren and I emphasized the need to have an answer/path forward. I will let you know as soon as I hear more.

Have a good weekend!

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Bush, William
Sent: Tuesday, June 11, 2019 12:59 PM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Cc: Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: Re: Hattiesburg SEP

Thanks!!

Sent from my iPhone

On Jun 11, 2019, at 12:03 PM, Rae, Sarah <Rae.Sarah@epa.gov> wrote:

Bill,

I just spoke with Rosemarie and she was not sure if Susan's email went out yet. We have put this on the agenda for the weekly with Susan for Thursday afternoon, I hope to have an answer after that meeting!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Bush, William
Sent: Tuesday, June 11, 2019 11:53 AM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: Re: Hattiesburg SEP

Suzanne and I just ran into the atty for Hattiesburg at a conference and he was asking what was happening w the cd.

Sent from my iPhone

On Jun 11, 2019, at 11:46 AM, Bush, William <Bush.William@epa.gov> wrote:

Hi, Sarah. Did the email to DOJ go out? Any other update?

Sent from my iPhone

On Jun 3, 2019, at 4:30 PM, Gonzalez, Sarah <Gonzalez.Sarah@epa.gov> wrote:

Suzanne and Bill,

First, welcome back to enforcement Bill! Ex. 5 AC
Ex. 5 AC
Ex. 5 AC. Susan plans to send an email to DOJ management as a follow-up to the in-person meeting last week. Since DOJ management seemed potentially open to the idea of "grandfathering" some SEPs where the cases are final/near final, the email will include detailed information and justifications for the 5
Ex. 5 Attorney Client (AC)
Ex. 5 Attorney Client (AC)

I hope this helps clarify. Give me a call if you have any further questions!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
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gonzalez.sarah@epa.gov

It is important to think beyond yourself.

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Message

From: Prichard, Gary [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6642746B4287469B99C71A23DEAA882D-GPRICHAR]
Sent: 7/20/2017 12:38:14 PM
To: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]
Subject: Re: Updated outline of Middletown issues

Ex. 5: DP, AC, AWP

From: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Sent: Thursday, July 20, 2017 7:16:22 AM
To: Prichard, Gary
Subject: Automatic reply: Updated outline of Middletown issues

I will be out of the office on work travel Thursday, July 20, through Monday, July 24. I will be checking email periodically.

Thanks,
Nick

Message

From: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]
Sent: 7/11/2017 3:56:30 PM
To: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
CC: Prichard, Gary [prichard.gary@epa.gov]
Subject: RE: Middletown - Next Steps

Hi Sarah – I haven't heard anything, so I'll send a follow-up email today.

Nick

From: Gonzalez, Sarah [mailto:Gonzalez.Sarah@epa.gov]
Sent: Tuesday, July 11, 2017 11:01 AM
To: McDaniel, Nicholas A. (ENRD) <NMcDaniel@ENRD.USDOJ.GOV>
Cc: Prichard, Gary <prichard.gary@epa.gov>
Subject: RE: Middletown - Next Steps

Good morning Nick,

Have we heard back from Vince re meeting location?

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
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WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Thursday, July 06, 2017 11:12 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Prichard, Gary <prichard.gary@epa.gov>; Robert.Darnell@USDOJ.GOV; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: RE: Middletown - Next Steps

Vince,

DOJ and EPA are able to meet on July 24th. We would prefer to have this meeting at EPA's Region 5 offices in Chicago, if possible. Let me know if that works for the City.

I think this should be a broader meeting, so that we can address any and all practical/technical questions that might come up as well. But it may be a good idea to have a lawyers-only call prior to the meeting – we may be able to resolve a few of the more legal issues, and at the very least we can identify the remaining issues prior to the settlement meeting. Are you, Andrew, and Les available Wednesday, July 19, at 3 pm eastern?

Thanks,
Nick

From: Atriano, Vincent [mailto:vincent.atriano@squirepb.com]
Sent: Tuesday, June 27, 2017 6:59 PM
To: McDaniel, Nicholas A. (ENRD) <NMcDaniel@ENRD.USDOJ.GOV>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Prichard, Gary <prichard.gary@epa.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: RE: Middletown - Next Steps

Nick:

The City is available to meet on either July 24th or 25th. Are you contemplating that the meeting will be limited to attorneys only, as we have discussed in the past, or a broader meeting?

We continue to work on a proposed SEP and penalty counteroffer. We have a good candidate project in the Hydraulic Canal, but there are still some technical questions we still need to work though. We are making progress and should have some more specifics for you within the next couple of weeks.

Please let us know if these proposed meeting dates will work for your side. Thanks.

Vince

SQUIRE PATTON BOGGS

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O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Sunday, June 18, 2017 7:44 PM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Prichard, Gary <prichard.gary@epa.gov>; Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Next Steps

Vince, Andrew, and Les,

Thanks for sharing the redlines and the information from Brown and Caldwell on the pipe replacement and rehabilitation. We're reviewing now, and we'll let you know if we have any questions or issues as they come up. I wanted to touch base about two things:

1. **Civil Penalty and Potential SEP(s)** – Do you know when the City will be able to provide a penalty counter-offer, potentially along with information about possible SEPs?
2. **In-Person Meeting** – I think Les has mentioned a couple times before, and we agree, that a full-day in-person meeting to hash out the remaining issues would be beneficial. The governments believe we are at that point – we know there are still areas of disagreement, but we think we can reach agreement on those issues if we spend some time talking through them in-person. To that end, is the City available for an all-day settlement meeting sometime the week of July 24?

Thanks again, and let me know if there's anything you'd like to discuss.

Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

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Message

From: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]
Sent: 11/16/2017 9:24:45 PM
To: Prichard, Gary [prichard.gary@epa.gov]
Subject: Re: Middletown - Updated SEP Summary

Ex. 5: DP, AC, AWP

Sent from my iPhone

On Nov 16, 2017, at 3:48 PM, Prichard, Gary <prichard.gary@epa.gov> wrote:

Ex. 5: DP, AC, AWP

Thanks,

Gary

From: Makepeace, Caroline
Sent: Thursday, November 16, 2017 2:28 PM
To: Prichard, Gary
Cc: Gonzalez, Sarah; McDaniel, Nicholas A. (ENRD); Robert.Darnell@USDOJ.GOV; Moody, Jonathan; Valdes, Carla
Subject: RE: Middletown - Updated SEP Summary

Ex. 5: DP, AC, AWP

Caroline Makepeace

Senior Counsel

Crosscutting Policy Staff

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

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From: Prichard, Gary
Sent: Thursday, November 16, 2017 2:43 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>; Robert.Darnell@USDOJ.GOV; Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5: DP, AC, AWP

Ex. 5: DP, AC, AWP

Gary

From: Makepeace, Caroline
Sent: Thursday, November 16, 2017 1:08:17 PM
To: Prichard, Gary
Cc: Gonzalez, Sarah; McDaniel, Nicholas A. (ENRD); Robert.Darnell@USDOJ.GOV; Moody, Jonathan; Valdes, Carla
Subject: Re: Middletown - Updated SEP Summary

Ex. 5: DP, AC, AWP

Sent from my iPhone

On Nov 16, 2017, at 1:14 PM, Prichard, Gary <prichard.gary@epa.gov> wrote:

Ex. 5: DP, AC, AWP

From: Prichard, Gary
Sent: Thursday, November 16, 2017 12:12:09 PM
To: Makepeace, Caroline; Gonzalez, Sarah; McDaniel, Nicholas A. (ENRD); Robert.Darnell@USDOJ.GOV; Moody, Jonathan; Valdes, Carla
Subject: Re: Middletown - Updated SEP Summary

Ex. 5: DP, AC, AWP

From: Makepeace, Caroline
Sent: Thursday, November 16, 2017 12:01:13 PM
To: Prichard, Gary; Gonzalez, Sarah; McDaniel, Nicholas A. (ENRD); Robert.Darnell@USDOJ.GOV; Moody, Jonathan; Valdes, Carla
Subject: RE: Middletown - Updated SEP Summary

Gary and Sarah et al. –

Ex. 5: DP, AC, AWP

Ex. 5: DP, AC, AWP

Ex. 5: DP, AC, AWP

Caroline Makepeace

Senior Counsel

Crosscutting Policy Staff

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From: Prichard, Gary
Sent: Wednesday, November 15, 2017 6:37 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>; Robert.Darnell@USDOJ.GOV; Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5: DP, AC, AWP

Thanks,

Gary Prichard

Associate Regional Counsel

(312) 886-0570

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:15:00 PM
To: Prichard, Gary
Subject: RE: Middletown - Updated SEP Summary

Ex. 5: DP, AC, AWP

Sarah Gonzalez

Attorney-Adviser

United States Environmental Protection Agency

OECA - OCE - Water Enforcement Division

WJC South 3110B (Mail Code 2243-A)

1200 Pennsylvania Avenue NW

Washington, DC 20004

(202) 564-2841 (FAX 202-564-0018)

gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Wednesday, November 15, 2017 3:14 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5: DP, AC, AWP

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:11:19 PM
To: Prichard, Gary
Subject: FW: Middletown - Updated SEP Summary

Gary,

Ex. 5: DP, AC, AWP

Sarah Gonzalez

Attorney-Adviser

United States Environmental Protection Agency

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1200 Pennsylvania Avenue NW

Washington, DC 20004

(202) 564-2841 (FAX 202-564-0018)

gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 15, 2017 2:59 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Ex. 5: DP, AC, AWP

Caroline Makepeace

Senior Counsel

Crosscutting Policy Staff

Office of Civil Enforcement

US Environmental Protection Agency

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From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:48 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Ex. 5: DP, AC, AWP

Ex. 5: DP, AC, AWP

Ex. 5: DP, AC, AWP

Sarah Gonzalez

Attorney-Adviser

United States Environmental Protection Agency

OECA - OCE - Water Enforcement Division

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1200 Pennsylvania Avenue NW

Washington, DC 20004

(202) 564-2841 (FAX 202-564-0018)

gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 5:36 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah -

Ex. 5: DP, AC, AWP

Ex. 5: DP, AC, AWP

Caroline Makepeace

Senior Counsel

Crosscutting Policy Staff

Office of Civil Enforcement

US Environmental Protection Agency

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From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:56 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Ex. 5: DP, AC, AWP

Sarah Gonzalez

Attorney-Adviser

United States Environmental Protection Agency

OECA - OCE - Water Enforcement Division

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1200 Pennsylvania Avenue NW

Washington, DC 20004

(202) 564-2841 (FAX 202-564-0018)

gonzalez.sarah@epa.gov

From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:37 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

will do!

Sarah Gonzalez

Attorney-Adviser

United States Environmental Protection Agency

OECA - OCE - Water Enforcement Division

WJC South 3110B (Mail Code 2243-A)

1200 Pennsylvania Avenue NW

Washington, DC 20004

(202) 564-2841 (FAX 202-564-0018)

gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 12:02 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah –

Ex. 5: DP, AC, AWP

Ex. 5: DP, AC, AWP

Caroline Makepeace

Senior Counsel

Crosscutting Policy Staff

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

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From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:46 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Remind me if you haven't heard from me. There's a lot hopping, and I'm acting for Amy all week too. Thx,a nd have a good weekend.

Caroline Makepeace

Senior Counsel

Crosscutting Policy Staff

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:12 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Next week is perfect, thank you!

Sarah Gonzalez

Attorney-Adviser

United States Environmental Protection Agency

OECA - OCE - Water Enforcement Division

WJC South 3110B (Mail Code 2243-A)

1200 Pennsylvania Avenue NW

Washington, DC 20004

(202) 564-2841 (FAX 202-564-0018)

gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:10 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

I will. But not until next week. Is that ok?

Caroline Makepeace

Senior Counsel

Crosscutting Policy Staff

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:08 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Middletown - Updated SEP Summary

Good afternoon Caroline,

Ex. 5: DP, AC, AWP

Thank you in advance,

Sarah Gonzalez

Attorney-Adviser

United States Environmental Protection Agency

OECA - OCE - Water Enforcement Division

WJC South 3110B (Mail Code 2243-A)

1200 Pennsylvania Avenue NW

Washington, DC 20004

(202) 564-2841 (FAX 202-564-0018)

gonzalez.sarah@epa.gov

From: Atriano, Vincent [mailto:vincent.atriano@squirepb.com]
Sent: Wednesday, November 08, 2017 3:07 PM
To: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Cc: Robert.Darnell@USDOJ.GOV; Prichard, Gary <prichard.gary@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; 'Tadych, Scott' (scottt@cityofmiddletown.org) <scottt@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Subject: RE: Middletown - Updated Drafts

INADMISSIBLE SETTLEMENT COMMUNICATION

Nick:

Attached please find a letter responding to your request for additional information concerning the City's proposed SEP. Please let me know if you have any questions. Thanks.

Vince

<image001.jpg>

Vincent Atriano

Partner

Squire Patton Boggs (US) LLP

2000 Huntington Center

41 South High Street

Columbus, Ohio 43215

T +1 614 365 2783

O +1 614 365 2700

F +1 614 365 2499

M +1 614 579 4708

vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, October 18, 2017 10:59 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Updated Drafts

Vince, Andrew, and Les,

Please see the attached redlines, and the responses below. I believe the state is still reviewing the drafts.

CD and PCMP Appendix

We accepted almost all of your proposed changes. A couple notes/explanations:

- CD Paragraph 20 – If we're going to include the sentence allowing for a force majeure, we need to use the "best efforts" language rather than "diligent efforts." "Best efforts" has been used in other CDs, and it mirrors the language in the Force Majeure section itself.

- CD Paragraph 21 – Interest needs to accrue from the Effective Date, so we can't accept this deletion. The City can pay immediately upon entry and avoid any interest (which would be minimal anyway).
- PCMP wet weather sampling – We rejected this change; Middletown should take samples during wet weather both when CSOs are occurring and when they're not. At that point, the CSOs will not be discharging during most wet weather events.

SEP Questions

Thank you for the information about the proposed SEP. For our own internal process, we could use some additional details: What is in the sediments being capped? Why are those pollutants bad for public health and the environment? Will the capping prevent those sediments from being discharged into the river via the hydraulic canal? The more specifics you're able to provide, the better.

Total Civil Penalty

We appreciate the City's explanation that it would be agreeing to perform a SEP with a significant price tag of $200k. However, the City's offer of a $20k cash penalty is not acceptable. Under the SEP Policy, a SEP may only offset up to 40% of the total penalty amount. So in this case, pursuant to the City's offer, EPA would consider the total penalty to be $33,333 ($20,000 in cash and $13,333 in SEP "credit"). This number is less than the $40,000 offered previously by the City. Again, we recognize that the City would be agreeing to spend additional money on a SEP, which is why we are willing to accept a penalty that is much lower than our original offers, but the cash portion of the City's penalty must be significantly higher.

Thanks,

Nick

Nicholas A. McDaniel

Trial Attorney

Environmental Enforcement Section

Environment and Natural Resources Division

United States Department of Justice

P.O. Box 7611, Washington DC 20044

(202) 514-0096

Nicholas.A.McDaniel@usdoj.gov

---

46 Offices in 20 Countries

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#US

Message

From: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
Sent: 7/6/2017 3:09:49 PM
To: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]; Klingenstein, Mark J. [MARK.J.KLINGENSTEIN@leidos.com]; Prichard, Gary [prichard.gary@epa.gov]; Valdes, Carla [valdes.carla@epa.gov]; Moody, Jonathan [moody.jonathan@epa.gov]; Robert.Darnell@USDOJ.GOV
Subject: RE: Middletown - Next Steps

Sounds good. Thanks Nick.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

-----Original Message-----
From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Thursday, July 06, 2017 11:06 AM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Klingenstein, Mark J. <MARK.J.KLINGENSTEIN@leidos.com>; Prichard, Gary <prichard.gary@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>; Moody, Jonathan <moody.jonathan@epa.gov>; Robert.Darnell@USDOJ.GOV
Subject: RE: Middletown - Next Steps

Hi Sarah - I'm sure the City is expecting to meet in Middletown, but I can check to see what they say. If they prefer to meet in Ohio, I think we should just do that.

Nick

-----Original Message-----
From: Gonzalez, Sarah [mailto:Gonzalez.Sarah@epa.gov]
Sent: Thursday, July 06, 2017 9:51 AM
To: McDaniel, Nicholas A. (ENRD) <NMcDaniel@ENRD.USDOJ.GOV>; Klingenstein, Mark J. <MARK.J.KLINGENSTEIN@leidos.com>; Prichard, Gary <prichard.gary@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>; Moody, Jonathan <moody.jonathan@epa.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>
Subject: RE: Middletown - Next Steps

Nick,

Can we meet in Chicago since we went to Middletown last time? Or has the City requested to meet in Middletown?

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency OECA - OCE - Water Enforcement Division WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

-----Original Message-----
From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, July 05, 2017 6:45 PM
To: Klingenstein, Mark J. <MARK.J.KLINGENSTEIN@leidos.com>; Prichard, Gary <prichard.gary@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>; Moody, Jonathan <moody.jonathan@epa.gov>; Robert.Darnell@USDOJ.GOV
Subject: RE: Middletown - Next Steps

If there aren't any objections, let's plan on an all-day meeting Monday, July 24. I'll email Middletown tomorrow.

-----Original Message-----
From: Klingenstein, Mark J. [mailto:MARK.J.KLINGENSTEIN@leidos.com]
Sent: Wednesday, June 28, 2017 5:42 PM

To: McDaniel, Nicholas A. (ENRD) <NMcDaniel@ENRD.USDOJ.GOV>; Gary Prichard <prichard.gary@epa.gov>; Sarah Gonzalez <Gonzalez.Sarah@epa.gov>; valdes.carla@epa.gov; Jonathan Moody <moody.jonathan@epa.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>
Subject: RE: Middletown - Next Steps

Nick,

Both dates are fine for me.

Mark J. Klingenstein, P.E. | Leidos
Senior Environmental Engineer, Project Manager | Engineering & Technical Solutions Division
phone: 973-343-0907 | fax 973-366-4552|mobile: 201-233-4330 | email: mark.j.klingenstein@leidos.com
Leidos, 356 Ninth Avenue, Suite 106, Picatinny Arsenal, Dover, NJ 07801 www.leidos.com I
leidos.com/infrastructure

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-----Original Message-----
From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, June 28, 2017 12:42 PM
To: Gary Prichard; Sarah Gonzalez; valdes.carla@epa.gov; Jonathan Moody; Darnell, Robert (ENRD); Klingenstein, Mark J.
Subject: EXTERNAL: Fwd: Middletown - Next Steps

See below for an email from Vince with proposed meeting dates. Let me know if you can make either or both of these days work.

I'm going to cancel our afternoon call today, but we'll check in soon.

Thanks!
Nick

Begin forwarded message:

From: "Atriano, Vincent" <vincent.atriano@squirepb.com<mailto:vincent.atriano@squirepb.com>>
Date: June 27, 2017 at 6:58:52 PM EDT
To: "McDaniel, Nicholas A. (ENRD)" <Nicholas.A.McDaniel@usdoj.gov<mailto:Nicholas.A.McDaniel@usdoj.gov>>, "Landen, Les (lesl@cityofmiddletown.org<mailto:lesl@cityofmiddletown.org>)" <lesl@cityofmiddletown.org<mailto:lesl@cityofmiddletown.org>>, "Etter, Andrew" <andrew.etter@squirepb.com<mailto:andrew.etter@squirepb.com>>
Cc: "Prichard, Gary" <prichard.gary@epa.gov<mailto:prichard.gary@epa.gov>>, "Darnell, Robert (ENRD)" <Robert.Darnell@usdoj.gov<mailto:Robert.Darnell@usdoj.gov>>, "'Gonzalez, Sarah'" <Gonzalez.Sarah@epa.gov<mailto:Gonzalez.Sarah@epa.gov>>, "Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov<mailto:lawrence.helkowski@ohioattorneygeneral.gov>)" <lawrence.helkowski@ohioattorneygeneral.gov<mailto:lawrence.helkowski@ohioattorneygeneral.gov>>
Subject: RE: Middletown - Next Steps

Nick:

The City is available to meet on either July 24th or 25th. Are you contemplating that the meeting will be limited to attorneys only, as we have discussed in the past, or a broader meeting?

We continue to work on a proposed SEP and penalty counteroffer. We have a good candidate project in the Hydraulic Canal, but there are still some technical questions we still need to work though. We are making progress and should have some more specifics for you within the next couple of weeks.

Please let us know if these proposed meeting dates will work for your side. Thanks.

Vince

[Squire Patton Boggs]

Vincent Atriano
Partner
Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
T +1 614 365 2783
O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708

vincent.atriano@squirepb.com<mailto:vincent.atriano@squirepb.com> |
squirepattonboggs.com<http://www.squirepattonboggs.com>

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Sunday, June 18, 2017 7:44 PM
To: Atriano, Vincent <vincent.atriano@squirepb.com<mailto:vincent.atriano@squirepb.com>>; Landen, Les (lesl@cityofmiddletown.org<mailto:lesl@cityofmiddletown.org>)
<lesl@cityofmiddletown.org<mailto:lesl@cityofmiddletown.org>>; Etter, Andrew
<andrew.etter@squirepb.com<mailto:andrew.etter@squirepb.com>>
Cc: Prichard, Gary <prichard.gary@epa.gov<mailto:prichard.gary@epa.gov>>; Darnell, Robert (ENRD)
<Robert.Darnell@usdoj.gov<mailto:Robert.Darnell@usdoj.gov>>; 'Gonzalez, Sarah'
<Gonzalez.Sarah@epa.gov<mailto:Gonzalez.Sarah@epa.gov>>; Helkowski Scott
(lawrence.helkowski@ohioattorneygeneral.gov<mailto:lawrence.helkowski@ohioattorneygeneral.gov>)
<lawrence.helkowski@ohioattorneygeneral.gov<mailto:lawrence.helkowski@ohioattorneygeneral.gov>>
Subject: Middletown - Next Steps

Vince, Andrew, and Les,

Thanks for sharing the redlines and the information from Brown and Caldwell on the pipe replacement and rehabilitation. We're reviewing now, and we'll let you know if we have any questions or issues as they come up. I wanted to touch base about two things:

1. Civil Penalty and Potential SEP(s) - Do you know when the City will be able to provide a penalty counter-offer, potentially along with information about possible SEPs?
2. In-Person Meeting - I think Les has mentioned a couple times before, and we agree, that a full-day in-person meeting to hash out the remaining issues would be beneficial. The governments believe we are at that point - we know there are still areas of disagreement, but we think we can reach agreement on those issues if we spend some time talking through them in-person. To that end, is the City available for an all-day settlement meeting sometime the week of July 24?

Thanks again, and let me know if there's anything you'd like to discuss.

Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division United States Department of Justice P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov<mailto:Nicholas.A.McDaniel@usdoj.gov>

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46 Offices in 21 Countries

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Message

From: Atriano, Vincent [vincent.atriano@squirepb.com]
Sent: 12/18/2017 1:28:05 PM
To: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]
CC: Prichard, Gary [prichard.gary@epa.gov]; Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]; Robert.Darnell@USDOJ.GOV; Etter, Andrew [andrew.etter@squirepb.com]
Subject: Re: Middletown CD

Thank you, Nick. We will wait to receive your updated draft.

Vince

Sent from my Verizon LG Smartphone

------ Original message------
From: McDaniel, Nicholas A. (ENRD)
Date: Sun, Dec 17, 2017 9:14 PM
To: Atriano, Vincent;
Cc: Prichard, Gary;Gonzalez, Sarah;Darnell, Robert (ENRD);Etter, Andrew;
Subject: Re: Middletown CD

Vince and Andrew,

Thanks for sharing the updated attachment - I believe this works for us.

I spoke to Scott on Friday, and it is my understanding that the State is on board with the CD, penalty, and SEP. I had hoped to send you an updated, clean CD draft by now, but that's been slowed down a bit because the State has expressed a preference to be listed as a defendant in the Consent Decree, and then move to realign after lodging of the Decree. This is apparently how it's been done in recent cases such as Akron and Cleveland Heights.

I'm hoping to get you a draft as early as possible tomorrow, so that it can be shared with the City.

Nick

On Dec 13, 2017, at 3:52 PM, Atriano, Vincent <vincent.atriano@squirepb.com> wrote:

INADMISSIBLE SETTLEMENT COMMUNICATION

Thank you, Nick. The wording changes in your email (item 2 below) are still under review by the City's team, but I do not expect them to be problematic.

As for item 1 below, attached is a revised construction schedule (Appdx. C) with specific dates tied to 1/1/18. Please let me know if it is acceptable. Thanks.

Vince

<image001.jpg> Vincent Atriano
Partner

Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
T +1 614 365 2783
O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, December 13, 2017 11:38 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>
Subject: Middletown CD

Vince and Andrew,

Thanks for talking with me yesterday afternoon. As I mentioned, we're hoping to send you a cleaned-up draft of the CD by Friday, but I flagged two things that I wanted to bring to your attention:

1. We need to update the construction schedule attachment, with the timeline tied to January 1, 2018 – It's my understanding that Brown and Caldwell will be working on this.
2. Two small language changes to Paragraph 87: "…Defendant's request for modification may be based, among other things, on: (a) integrated planning elements developed in accordance with U.S. EPA's Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued on June 5, 2012; or (b) a current ~~updated~~ Financial Capability Assessment, which may include additional financial information (per U.S. EPA's Financial Capability Assessment Framework, issued on November 24, 2014).

Thanks, and let me know if there's anything you want to discuss in the next couple days.

Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

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#US

<Appdx C Constr Sched.pdf>

Message

From: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Sent: 11/16/2017 6:36:01 PM
To: Prichard, Gary [prichard.gary@epa.gov]
CC: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]; McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]; Robert.Darnell@USDOJ.GOV; Moody, Jonathan [moody.jonathan@epa.gov]; Valdes, Carla [valdes.carla@epa.gov]
Subject: Re: Middletown - Updated SEP Summary

Sounds good, will look out for your rewrite. Thanks!

Sent from my iPhone

On Nov 16, 2017, at 1:12 PM, Prichard, Gary <prichard.gary@epa.gov> wrote:

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

From: Makepeace, Caroline
Sent: Thursday, November 16, 2017 12:01:13 PM
To: Prichard, Gary; Gonzalez, Sarah; McDaniel, Nicholas A. (ENRD); Robert.Darnell@USDOJ.GOV; Moody, Jonathan; Valdes, Carla
Subject: RE: Middletown - Updated SEP Summary

Gary and Sarah et al. –

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Prichard, Gary
Sent: Wednesday, November 15, 2017 6:37 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>; Robert.Darnell@USDOJ.GOV; Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Gary Prichard
Associate Regional Counsel
(312) 886-0570

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:15:00 PM
To: Prichard, Gary
Subject: RE: Middletown - Updated SEP Summary

sounds good. Thanks Gary.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Wednesday, November 15, 2017 3:14 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

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From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:11:19 PM
To: Prichard, Gary
Subject: FW: Middletown - Updated SEP Summary

Gary,

here is the latest from Caroline (our SEP person).

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 15, 2017 2:59 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement

US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:48 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser

United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 5:36 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah -
This is very helpful, and thanks for putting it together.

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:56 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Here is the information you requested.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:37 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

will do!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 12:02 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah –

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:46 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Remind me if you haven't heard from me. There's a lot hopping, and I'm acting for Amy all week too. Thx,a nd have a good weekend.

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:12 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Next week is perfect, thank you!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:10 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

I will. But not until next week. Is that ok?

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:08 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Middletown - Updated SEP Summary

Good afternoon Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thank you in advance,

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Atriano, Vincent [mailto:vincent.atriano@squirepb.com]
Sent: Wednesday, November 08, 2017 3:07 PM
To: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Cc: Robert.Darnell@USDOJ.GOV; Prichard, Gary <prichard.gary@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; 'Tadych, Scott' (scottt@cityofmiddletown.org) <scottt@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Subject: RE: Middletown - Updated Drafts

INADMISSIBLE SETTLEMENT COMMUNICATION

Nick:

Attached please find a letter responding to your request for additional information concerning the City's proposed SEP. Please let me know if you have any questions. Thanks.

Vince

<image001.jpg>

Vincent Atriano
Partner
Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
T +1 614 365 2783
O +1 614 365 2700
F +1 614 365 2499

M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, October 18, 2017 10:59 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Updated Drafts

Vince, Andrew, and Les,

Please see the attached redlines, and the responses below. I believe the state is still reviewing the drafts.

CD and PCMP Appendix

We accepted almost all of your proposed changes. A couple notes/explanations:

- CD Paragraph 20 – If we're going to include the sentence allowing for a force majeure, we need to use the "best efforts" language rather than "diligent efforts." "Best efforts" has been used in other CDs, and it mirrors the language in the Force Majeure section itself.
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- PCMP wet weather sampling – We rejected this change; Middletown should take samples during wet weather both when CSOs are occurring and when they're not. At that point, the CSOs will not be discharging during most wet weather events.

SEP Questions

Thank you for the information about the proposed SEP. For our own internal process, we could use some additional details: What is in the sediments being capped? Why are those pollutants bad for public health and the environment? Will the capping prevent those sediments from being discharged into the river via the hydraulic canal? The more specifics you're able to provide, the better.

Total Civil Penalty

We appreciate the City's explanation that it would be agreeing to perform a SEP with a significant price tag of Ex. 7(A) However, the City's offer of a Ex. 7(A) ash penalty is not acceptable. Under the SEP Policy, a SEP may only offset up to 40% of the total penalty amount. So in this case, pursuant to the City's offer, EPA would consider the total penalty to be Ex. 7(A) in cash and Ex. 7(A) in SEP "credit"). This number is less than the $ Ex. 7(A) offered previously by the City. Again, we recognize that the City would be agreeing to spend additional money on a SEP, which is why we are willing to accept a penalty that is much lower than our original offers, but the cash portion of the City's penalty must be significantly higher.

Thanks,

Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

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46 Offices in 20 Countries

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#US

Message

From: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]
Sent: 11/16/2017 6:29:26 PM
To: Prichard, Gary [prichard.gary@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]; Robert.Darnell@USDOJ.GOV; Moody, Jonathan [moody.jonathan@epa.gov]; Valdes, Carla [valdes.carla@epa.gov]
Subject: RE: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

From: Prichard, Gary [mailto:prichard.gary@epa.gov]
Sent: Thursday, November 16, 2017 1:14 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; McDaniel, Nicholas A. (ENRD) <NMcDaniel@ENRD.USDOJ.GOV>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

From: Prichard, Gary
Sent: Thursday, November 16, 2017 12:12:09 PM
To: Makepeace, Caroline; Gonzalez, Sarah; McDaniel, Nicholas A. (ENRD); Robert.Darnell@USDOJ.GOV; Moody, Jonathan; Valdes, Carla
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

From: Makepeace, Caroline
Sent: Thursday, November 16, 2017 12:01:13 PM
To: Prichard, Gary; Gonzalez, Sarah; McDaniel, Nicholas A. (ENRD); Robert.Darnell@USDOJ.GOV; Moody, Jonathan; Valdes, Carla
Subject: RE: Middletown - Updated SEP Summary

Gary and Sarah et al. –

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Prichard, Gary
Sent: Wednesday, November 15, 2017 6:37 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>; Robert.Darnell@USDOJ.GOV; Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Gary Prichard
Associate Regional Counsel
(312) 886-0570

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:15:00 PM
To: Prichard, Gary
Subject: RE: Middletown - Updated SEP Summary

sounds good. Thanks Gary.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Wednesday, November 15, 2017 3:14 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

---

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:11:19 PM
To: Prichard, Gary
Subject: FW: Middletown - Updated SEP Summary

Gary,

here is the latest from Caroline (our SEP person).

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 15, 2017 2:59 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:48 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 5:36 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah -
This is very helpful, and thanks for putting it together.

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:56 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Here is the information you requested.

Sarah Gonzalez

Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:37 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

will do!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 12:02 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah –

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel

Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:46 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Remind me if you haven't heard from me. There's a lot hopping, and I'm acting for Amy all week too. Thx,a nd have a good weekend.

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:12 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Next week is perfect, thank you!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:10 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

I will. But not until next week. Is that ok?

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff

Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:08 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Middletown - Updated SEP Summary

Good afternoon Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thank you in advance,

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Atriano, Vincent [mailto:vincent.atriano@squirepb.com]
Sent: Wednesday, November 08, 2017 3:07 PM
To: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Cc: Robert.Darnell@USDOJ.GOV; Prichard, Gary <prichard.gary@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; 'Tadych, Scott' (scottt@cityofmiddletown.org) <scottt@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Subject: RE: Middletown - Updated Drafts

INADMISSIBLE SETTLEMENT COMMUNICATION

Nick:

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Vince

SQUIRE PATTON BOGGS
Vincent Atriano
Partner
Squire Patton Boggs (US) LLP
2000 Huntington Center

41 South High Street
Columbus, Ohio 43215
T +1 614 365 2783
O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, October 18, 2017 10:59 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Updated Drafts

Vince, Andrew, and Les,

Please see the attached redlines, and the responses below. I believe the state is still reviewing the drafts.

CD and PCMP Appendix

We accepted almost all of your proposed changes. A couple notes/explanations:

- CD Paragraph 20 – If we're going to include the sentence allowing for a force majeure, we need to use the "best efforts" language rather than "diligent efforts." "Best efforts" has been used in other CDs, and it mirrors the language in the Force Majeure section itself.
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Total Civil Penalty

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Thanks,
Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

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46 Offices in 20 Countries

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#US

Message

From: Valdes, Carla [valdes.carla@epa.gov]
Sent: 6/28/2017 5:16:18 PM
To: Moody, Jonathan [moody.jonathan@epa.gov]; McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]
CC: Prichard, Gary [prichard.gary@epa.gov]
Subject: RE: Middletown - Next Steps

I am available that week, but let me check with my supervisor first before I commit.

From: Moody, Jonathan
Sent: Wednesday, June 28, 2017 12:02 PM
To: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Cc: Valdes, Carla <valdes.carla@epa.gov>; Prichard, Gary <prichard.gary@epa.gov>
Subject: RE: Middletown - Next Steps

I can't do the week of the 24th, I'm not sure it is necessary for me to be there at this point, much of the technical issues have been worked through, and the SEP should not be too controversial. This maybe an opportunity for Carla to come out if she is available.

Jonathan Moody, PE
Tel: (440) 250-1708
ENFORCEMENT CONFIDENTIAL/FOIA EXEMPT

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, June 28, 2017 12:42 PM
To: Prichard, Gary <prichard.gary@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>; Moody, Jonathan <moody.jonathan@epa.gov>; Robert.Darnell@USDOJ.GOV; Mark Klingenstein <mark.j.klingenstein@leidos.com>
Subject: Fwd: Middletown - Next Steps

See below for an email from Vince with proposed meeting dates. Let me know if you can make either or both of these days work.

I'm going to cancel our afternoon call today, but we'll check in soon.

Thanks!
Nick

Begin forwarded message:

> **From:** "Atriano, Vincent" <vincent.atriano@squirepb.com>
> **Date:** June 27, 2017 at 6:58:52 PM EDT
> **To:** "McDaniel, Nicholas A. (ENRD)" <Nicholas.A.McDaniel@usdoj.gov>, "Landen, Les (lesl@cityofmiddletown.org)" <lesl@cityofmiddletown.org>, "Etter, Andrew" <andrew.etter@squirepb.com>
> **Cc:** "Prichard, Gary" <prichard.gary@epa.gov>, "Darnell, Robert (ENRD)" <Robert.Darnell@usdoj.gov>, "'Gonzalez, Sarah'" <Gonzalez.Sarah@epa.gov>, "Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov)" <lawrence.helkowski@ohioattorneygeneral.gov>
> **Subject: RE: Middletown - Next Steps**

Nick:

The City is available to meet on either July 24th or 25th. Are you contemplating that the meeting will be limited to attorneys only, as we have discussed in the past, or a broader meeting?

We continue to work on a proposed SEP and penalty counteroffer. We have a good candidate project in the Hydraulic Canal, but there are still some technical questions we still need to work though. We are making progress and should have some more specifics for you within the next couple of weeks.

Please let us know if these proposed meeting dates will work for your side. Thanks.

Vince

Vincent Atriano
Partner
Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
T +1 614 365 2783
O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Sunday, June 18, 2017 7:44 PM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Prichard, Gary <prichard.gary@epa.gov>; Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Next Steps

Vince, Andrew, and Les,

Thanks for sharing the redlines and the information from Brown and Caldwell on the pipe replacement and rehabilitation. We're reviewing now, and we'll let you know if we have any questions or issues as they come up. I wanted to touch base about two things:

1. **Civil Penalty and Potential SEP(s)** – Do you know when the City will be able to provide a penalty counter-offer, potentially along with information about possible SEPs?

2. **In-Person Meeting** – I think Les has mentioned a couple times before, and we agree, that a full-day in-person meeting to hash out the remaining issues would be beneficial. The governments believe we are at that point – we know there are still areas of disagreement, but we think we can reach agreement on those issues if we spend some time talking through them in-person. To that end, is the City available for an all-day settlement meeting sometime the week of July 24?

Thanks again, and let me know if there's anything you'd like to discuss.

Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

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#US

Message

From: Prichard, Gary [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6642746B4287469B99C71A23DEAA882D-GPRICHAR]
Sent: 6/28/2017 5:12:03 PM
To: Moody, Jonathan [moody.jonathan@epa.gov]; McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]
CC: Valdes, Carla [valdes.carla@epa.gov]
Subject: Re: Middletown - Next Steps

I am available both dates.

From: Moody, Jonathan
Sent: Wednesday, June 28, 2017 12:02:13 PM
To: McDaniel, Nicholas A. (ENRD)
Cc: Valdes, Carla; Prichard, Gary
Subject: RE: Middletown - Next Steps

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Tel: (440) 250-1708
ENFORCEMENT CONFIDENTIAL/FOIA EXEMPT

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Sent: Wednesday, June 28, 2017 12:42 PM
To: Prichard, Gary <prichard.gary@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>; Moody, Jonathan <moody.jonathan@epa.gov>; Robert.Darnell@USDOJ.GOV; Mark Klingenstein <mark.j.klingenstein@leidos.com>
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> **Date:** June 27, 2017 at 6:58:52 PM EDT
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> **Cc:** "Prichard, Gary" <prichard.gary@epa.gov>, "Darnell, Robert (ENRD)" <Robert.Darnell@usdoj.gov>, "'Gonzalez, Sarah'" <Gonzalez.Sarah@epa.gov>, "Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov)" <lawrence.helkowski@ohioattorneygeneral.gov>
> **Subject: RE: Middletown - Next Steps**

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Vince

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O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Sunday, June 18, 2017 7:44 PM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Prichard, Gary <prichard.gary@epa.gov>; Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Next Steps

Vince, Andrew, and Les,

Thanks for sharing the redlines and the information from Brown and Caldwell on the pipe replacement and rehabilitation. We're reviewing now, and we'll let you know if we have any questions or issues as they come up. I wanted to touch base about two things:

1. **Civil Penalty and Potential SEP(s)** – Do you know when the City will be able to provide a penalty counter-offer, potentially along with information about possible SEPs?

2. **In-Person Meeting** – I think Les has mentioned a couple times before, and we agree, that a full-day in-person meeting to hash out the remaining issues would be beneficial. The governments believe we are at that point – we know there are still areas of disagreement, but we think we can reach agreement on those issues if we spend some time talking through them in-person. To that end, is the City available for an all-day settlement meeting sometime the week of July 24?

Thanks again, and let me know if there's anything you'd like to discuss.

Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

---
46 Offices in 21 Countries

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#US

Message

From: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]
Sent: 11/16/2017 6:10:40 PM
To: Prichard, Gary [prichard.gary@epa.gov]
Subject: Fwd: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sent from my iPhone

Begin forwarded message:

From: "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>
Date: November 16, 2017 at 1:01:13 PM EST
To: "Prichard, Gary" <prichard.gary@epa.gov>, "Gonzalez, Sarah" <Gonzalez.Sarah@epa.gov>, "McDaniel, Nicholas A. (ENRD)" <Nicholas.A.McDaniel@usdoj.gov>, "Robert.Darnell@USDOJ.GOV" <Robert.Darnell@USDOJ.GOV>, "Moody, Jonathan" <moody.jonathan@epa.gov>, "Valdes, Carla" <valdes.carla@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Gary and Sarah et al. –

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Prichard, Gary
Sent: Wednesday, November 15, 2017 6:37 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>; Robert.Darnell@USDOJ.GOV; Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Gary Prichard
Associate Regional Counsel
(312) 886-0570

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:15:00 PM
To: Prichard, Gary
Subject: RE: Middletown - Updated SEP Summary

sounds good. Thanks Gary.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Wednesday, November 15, 2017 3:14 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:11:19 PM
To: Prichard, Gary
Subject: FW: Middletown - Updated SEP Summary

Gary,

here is the latest from Caroline (our SEP person).

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 15, 2017 2:59 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
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From: Gonzalez, Sarah
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To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division

WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 5:36 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah -

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:56 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Here is the information you requested.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:37 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

will do!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 12:02 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah –

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:46 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Remind me if you haven't heard from me. There's a lot hopping, and I'm acting for Amy all week too. Thx,a nd have a good weekend.

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:12 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Next week is perfect, thank you!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:10 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

I will. But not until next week. Is that ok?

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:08 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Middletown - Updated SEP Summary

Good afternoon Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thank you in advance,

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Atriano, Vincent [mailto:vincent.atriano@squirepb.com]
Sent: Wednesday, November 08, 2017 3:07 PM
To: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Cc: Robert.Darnell@USDOJ.GOV; Prichard, Gary <prichard.gary@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; 'Tadych, Scott' (scottt@cityofmiddletown.org) <scottt@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Subject: RE: Middletown - Updated Drafts

INADMISSIBLE SETTLEMENT COMMUNICATION

Nick:

Attached please find a letter responding to your request for additional information concerning the City's proposed SEP. Please let me know if you have any questions. Thanks.

Vince

SQUIRE PATTON BOGGS

Vincent Atriano
Partner
Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
T +1 614 365 2783
O +1 614 365 2700
F +1 614 365 2499

M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, October 18, 2017 10:59 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Updated Drafts

Vince, Andrew, and Les,

Please see the attached redlines, and the responses below. I believe the state is still reviewing the drafts.

CD and PCMP Appendix

We accepted almost all of your proposed changes. A couple notes/explanations:

- CD Paragraph 20 – If we're going to include the sentence allowing for a force majeure, we need to use the "best efforts" language rather than "diligent efforts." "Best efforts" has been used in other CDs, and it mirrors the language in the Force Majeure section itself.
- CD Paragraph 21 – Interest needs to accrue from the Effective Date, so we can't accept this deletion. The City can pay immediately upon entry and avoid any interest (which would be minimal anyway).
- PCMP wet weather sampling – We rejected this change; Middletown should take samples during wet weather both when CSOs are occurring and when they're not. At that point, the CSOs will not be discharging during most wet weather events.

SEP Questions

Thank you for the information about the proposed SEP. For our own internal process, we could use some additional details: What is in the sediments being capped? Why are those pollutants bad for public health and the environment? Will the capping prevent those sediments from being discharged into the river via the hydraulic canal? The more specifics you're able to provide, the better.

Total Civil Penalty

We appreciate the City's explanation that it would be agreeing to perform a SEP with a significant price tag of Ex. 7(A) However, the City's offer of a Ex. 7(A) cash penalty is not acceptable. Under the SEP Policy, a SEP may only offset up to 40% of the total penalty amount. So in this case, pursuant to the City's offer, EPA would consider the total penalty to be Ex. 7(A) in cash and Ex. 7(A) in SEP "credit"). This number is less than the Ex. 7(A) offered previously by the City. Again, we recognize that the City would be agreeing to spend additional money on a SEP, which is why we are willing to accept a penalty that is much lower than our original offers, but the cash portion of the City's penalty must be significantly higher.

Thanks,

Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

---

46 Offices in 20 Countries

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#US

Message

From: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
Sent: 11/16/2017 1:11:26 PM
To: Prichard, Gary [prichard.gary@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]; McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]; Robert.Darnell@USDOJ.GOV; Moody, Jonathan [moody.jonathan@epa.gov]; Valdes, Carla [valdes.carla@epa.gov]
Subject: RE: Middletown - Updated SEP Summary

Thanks Gary!

Caroline – I will be out of office until the 29th. If you have any follow-up questions while I am out please contact Gary.

Thanks,

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

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Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Gary Prichard
Associate Regional Counsel
(312) 886-0570

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:15:00 PM
To: Prichard, Gary
Subject: RE: Middletown - Updated SEP Summary

sounds good. Thanks Gary.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division

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Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:11:19 PM
To: Prichard, Gary
Subject: FW: Middletown - Updated SEP Summary

Gary,

here is the latest from Caroline (our SEP person).

Sarah Gonzalez
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United States Environmental Protection Agency
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Subject: RE: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Subject: RE: Middletown - Updated SEP Summary

Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
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Sent: Tuesday, November 14, 2017 5:36 PM

To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah -

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
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From: Gonzalez, Sarah
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To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Here is the information you requested.

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Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
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Sarah Gonzalez
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Sarah –

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

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To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
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Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff

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To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Next week is perfect, thank you!

Sarah Gonzalez
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gonzalez.sarah@epa.gov

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To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

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Caroline Makepeace
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Good afternoon Caroline,

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Sarah Gonzalez
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Subject: RE: Middletown - Updated Drafts

INADMISSIBLE SETTLEMENT COMMUNICATION

Nick:

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Vince

SQUIRE PATTON BOGGS

Vincent Atriano
Partner
Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
T +1 614 365 2783
O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, October 18, 2017 10:59 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
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Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

---

46 Offices in 20 Countries

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person.

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#US

Message

From: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
Sent: 12/12/2017 5:56:32 PM
To: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]; Prichard, Gary [prichard.gary@epa.gov]
Subject: RE: Middletown - Final CD Package

Nick,

Please use:

MARK POLLINS
Director, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

SARAH GONZALEZ
Attorney-Adviser, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Tuesday, December 12, 2017 12:28 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Cc: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Subject: Fw: Middletown - Final CD Package

Sarah - Can you send Nick signature information for OECA? I sent it to him separately for Region 5.

Thanks,
Gary

From: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Sent: Tuesday, December 12, 2017 11:16 AM
To: Prichard, Gary
Subject: RE: Middletown - Final CD Package

Hi Gary – Here's the updated version, no signature pages yet. Do I have signature info for the region and HQ?

From: Prichard, Gary [mailto:prichard.gary@epa.gov]
Sent: Tuesday, December 12, 2017 12:05 PM
To: McDaniel, Nicholas A. (ENRD) <NMcDaniel@ENRD.USDOJ.GOV>
Subject: Re: Middletown - Final CD Package

Nick -Do you have an updated version of the CD, with all of the changes and signature pages? I'm hoping to get it into sign-off early this afternoon.

Thanks,
Gary

From: Prichard, Gary
Sent: Friday, December 8, 2017 3:53:01 PM
To: McDaniel, Nicholas A. (ENRD)
Subject: Re: Middletown - Final CD Package

No rush. It won't get into the review package I've put together until next week.

From: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Sent: Friday, December 8, 2017 3:47:09 PM
To: Prichard, Gary
Subject: RE: Middletown - Final CD Package

Hi Gary – I've been in meetings all day today, but I'm hoping to have an updated CD in the next hour before I leave. I'll send it to you as soon as it's ready.

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Sent: Friday, December 08, 2017 3:01 PM
To: McDaniel, Nicholas A. (ENRD) <NMcDaniel@ENRD.USDOJ.GOV>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Moody, Jonathan <moody.jonathan@epa.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; mark klingenstein <mark.j.klingenstein@leidos.com>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

---

From: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Sent: Friday, December 8, 2017 1:50:04 PM
To: Prichard, Gary; Gonzalez, Sarah; Moody, Jonathan; Robert.Darnell@USDOJ.GOV; mark klingenstein; Valdes, Carla
Subject: RE: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

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From: Prichard, Gary [mailto:prichard.gary@epa.gov]
Sent: Friday, December 08, 2017 2:40 PM

To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; McDaniel, Nicholas A. (ENRD) <NMcDaniel@ENRD.USDOJ.GOV>; Moody, Jonathan <moody.jonathan@epa.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; mark klingenstein <mark.j.klingenstein@leidos.com>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Final CD Package

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Subject: RE: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
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Gary

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Sent: Wednesday, December 6, 2017 3:25:04 PM
To: McDaniel, Nicholas A. (ENRD); Moody, Jonathan; Robert.Darnell@USDOJ.GOV; mark klingenstein; Prichard, Gary; Valdes, Carla
Subject: RE: Middletown - Final CD Package

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Sarah Gonzalez
Attorney-Adviser
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Sent: Wednesday, December 06, 2017 4:09 PM
To: Moody, Jonathan <moody.jonathan@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Robert.Darnell@USDOJ.GOV; mark klingenstein <mark.j.klingenstein@leidos.com>; Prichard, Gary <prichard.gary@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: FW: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Nick

From: McDaniel, Nicholas A. (ENRD)
Sent: Wednesday, December 06, 2017 11:22 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; 'Etter, Andrew' <andrew.etter@squirepb.com>
Cc: Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>
Subject: Middletown - Final CD Package

Vince and Andrew,

Attached are the documents that would make up our CD package to be lodged in this case. We're doing a final review, but we believe these docs are ready to be finalized and signed. As I discussed with you on the phone last week, if the City is able to accept a Ex. 7(A) cash penalty, plus the SEP, and if you can confirm the attached documents are good to go, we can finalize and PDF the documents and work on getting signatures.

I want to point out three changes in the attached – these are the only three changes made since the last time you received (or sent) any of the documents:

1. We deleted the parenthetical in the PCMP appendix that the city requested we delete on a phone call a while ago. Please confirm that this addresses your concern.
2. In the LTCP Table, Appendix A, the "Critical Milestones" column previously stated "TBD." I replaced "TBD" with "See Appendix C" (the construction schedule provided by Middletown).
3. Finally, in the SEP attachment, Appendix D, I deleted the previous paragraph 11, which explained why the project has a nexus with the alleged violations. That's something that's helpful for us internally, but it's not necessary for the appendix itself.

Thanks,
Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

Message

From: Prichard, Gary [prichard.gary@epa.gov]
Sent: 11/15/2017 11:36:35 PM
To: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]; McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]; Robert.Darnell@USDOJ.GOV; Moody, Jonathan [moody.jonathan@epa.gov]; Valdes, Carla [valdes.carla@epa.gov]
Subject: Re: Middletown - Updated SEP Summary
Attachments: Middletown, OH - SEP 11-15 .docx

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Gary Prichard
Associate Regional Counsel
(312) 886-0570

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:15:00 PM
To: Prichard, Gary
Subject: RE: Middletown - Updated SEP Summary

sounds good. Thanks Gary.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Wednesday, November 15, 2017 3:14 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

---

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:11:19 PM
To: Prichard, Gary
Subject: FW: Middletown - Updated SEP Summary

Gary,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 15, 2017 2:59 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:48 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 5:36 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah -

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:56 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Here is the information you requested.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:37 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

will do!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 12:02 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah –

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:46 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Remind me if you haven't heard from me. There's a lot hopping, and I'm acting for Amy all week too. Thx,a nd have a good weekend.

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:12 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Next week is perfect, thank you!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:10 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

I will. But not until next week. Is that ok?

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:08 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Middletown - Updated SEP Summary

Good afternoon Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thank you in advance,

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Atriano, Vincent [mailto:vincent.atriano@squirepb.com]
Sent: Wednesday, November 08, 2017 3:07 PM
To: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Cc: Robert.Darnell@USDOJ.GOV; Prichard, Gary <prichard.gary@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; 'Tadych, Scott' (scottt@cityofmiddletown.org) <scottt@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Subject: RE: Middletown - Updated Drafts

INADMISSIBLE SETTLEMENT COMMUNICATION

Nick:

Attached please find a letter responding to your request for additional information concerning the City's proposed SEP. Please let me know if you have any questions. Thanks.

Vince

SQUIRE PATTON BOGGS

Vincent Atriano
Partner
Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
T +1 614 365 2783
O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, October 18, 2017 10:59 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Updated Drafts

Vince, Andrew, and Les,

Please see the attached redlines, and the responses below. I believe the state is still reviewing the drafts.

CD and PCMP Appendix

We accepted almost all of your proposed changes. A couple notes/explanations:

- CD Paragraph 20 – If we're going to include the sentence allowing for a force majeure, we need to use the "best efforts" language rather than "diligent efforts." "Best efforts" has been used in other CDs, and it mirrors the language in the Force Majeure section itself.
- CD Paragraph 21 – Interest needs to accrue from the Effective Date, so we can't accept this deletion. The City can pay immediately upon entry and avoid any interest (which would be minimal anyway).
- PCMP wet weather sampling – We rejected this change; Middletown should take samples during wet weather both when CSOs are occurring and when they're not. At that point, the CSOs will not be discharging during most wet weather events.

SEP Questions

Thank you for the information about the proposed SEP. For our own internal process, we could use some additional details: What is in the sediments being capped? Why are those pollutants bad for public health and the environment? Will the capping prevent those sediments from being discharged into the river via the hydraulic canal? The more specifics you're able to provide, the better.

Total Civil Penalty

We appreciate the City's explanation that it would be agreeing to perform a SEP with a significant price tag of Ex. 7(A) However, the City's offer of a Ex. 7(A) cash penalty is not acceptable. Under the SEP Policy, a SEP may only offset up to 40% of the total penalty amount. So in this case, pursuant to the City's offer, EPA would consider the total penalty to be $ Ex. 7(A) in cash and Ex. 7(A) in SEP "credit"). This number is less than the Ex. 7(A) offered previously by the City. Again, we recognize that the City would be agreeing to spend additional money on a SEP, which is why we are willing to accept a penalty that is much lower than our original offers, but the cash portion of the City's penalty must be significantly higher.

Thanks,
Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
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#US

Message

From: Prichard, Gary [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6642746B4287469B99C71A23DEAA882D-GPRICHAR]
Sent: 12/12/2017 5:27:40 PM
To: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
CC: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]
Subject: Fw: Middletown - Final CD Package
Attachments: ENV_ENFORCEMENT-#2706519-v2-Middletown_-_12-8-17_Consent_Decree.docx

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Subject: Re: Middletown - Final CD Package

Have you made the changes to the CD that Vince noted in his message and Sarah later noted, and included signature pages? I'd like to put that into the sign off package today.

From: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Sent: Friday, December 8, 2017 1:50:04 PM
To: Prichard, Gary; Gonzalez, Sarah; Moody, Jonathan; Robert.Darnell@USDOJ.GOV; mark klingenstein; Valdes, Carla
Subject: RE: Middletown - Final CD Package

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Subject: RE: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

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Attorney-Adviser
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To: McDaniel, Nicholas A. (ENRD); Moody, Jonathan; Robert.Darnell@USDOJ.GOV; mark klingenstein; Prichard, Gary; Valdes, Carla
Subject: RE: Middletown - Final CD Package

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Sarah Gonzalez
Attorney-Adviser
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Sent: Wednesday, December 06, 2017 4:09 PM
To: Moody, Jonathan <moody.jonathan@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Robert.Darnell@USDOJ.GOV; mark klingenstein <mark.j.klingenstein@leidos.com>; Prichard, Gary <prichard.gary@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: FW: Middletown - Final CD Package

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From: McDaniel, Nicholas A. (ENRD)
Sent: Wednesday, December 06, 2017 11:22 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; 'Etter, Andrew' <andrew.etter@squirepb.com>
Cc: Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>
Subject: Middletown - Final CD Package

Vince and Andrew,

Attached are the documents that would make up our CD package to be lodged in this case. We're doing a final review, but we believe these docs are ready to be finalized and signed. As I discussed with you on the phone last week, if the City is able to accept a Ex. 7(A) cash penalty, plus the SEP, and if you can confirm the attached documents are good to go, we can finalize and PDF the documents and work on getting signatures.

I want to point out three changes in the attached – these are the only three changes made since the last time you received (or sent) any of the documents:

1. We deleted the parenthetical in the PCMP appendix that the city requested we delete on a phone call a while ago. Please confirm that this addresses your concern.
2. In the LTCP Table, Appendix A, the "Critical Milestones" column previously stated "TBD." I replaced "TBD" with "See Appendix C" (the construction schedule provided by Middletown).
3. Finally, in the SEP attachment, Appendix D, I deleted the previous paragraph 11, which explained why the project has a nexus with the alleged violations. That's something that's helpful for us internally, but it's not necessary for the appendix itself.

Thanks,
Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

Message

From: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
Sent: 11/15/2017 4:09:25 PM
To: Prichard, Gary [prichard.gary@epa.gov]; McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]; Robert.Darnell@USDOJ.GOV
CC: Moody, Jonathan [moody.jonathan@epa.gov]; Valdes, Carla [valdes.carla@epa.gov]
Subject: RE: Middletown - Updated SEP Summary

okay, thanks Gary!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Wednesday, November 15, 2017 11:07 AM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>; Robert.Darnell@USDOJ.GOV
Cc: Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Gary

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 9:25 AM
To: McDaniel, Nicholas A. (ENRD); Prichard, Gary; Robert.Darnell@USDOJ.GOV

Cc: Moody, Jonathan; Valdes, Carla
Subject: FW: Middletown - Updated SEP Summary

All,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
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1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 5:36 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah -

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:56 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Here is the information you requested.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:37 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

will do!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
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Washington, DC 20004
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gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 12:02 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah –

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:46 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Remind me if you haven't heard from me. There's a lot hopping, and I'm acting for Amy all week too. Thx,a nd have a good weekend.

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:12 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Next week is perfect, thank you!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:10 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

I will. But not until next week. Is that ok?

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:08 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Middletown - Updated SEP Summary

Good afternoon Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thank you in advance,

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
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1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

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Sent: Wednesday, November 08, 2017 3:07 PM
To: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Cc: Robert.Darnell@USDOJ.GOV; Prichard, Gary <prichard.gary@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; 'Tadych, Scott' (scottt@cityofmiddletown.org) <scottt@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Subject: RE: Middletown - Updated Drafts

INADMISSIBLE SETTLEMENT COMMUNICATION

Nick:

Attached please find a letter responding to your request for additional information concerning the City's proposed SEP. Please let me know if you have any questions. Thanks.

Vince

SQUIRE PATTON BOGGS

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Partner
Squire Patton Boggs (US) LLP
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O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, October 18, 2017 10:59 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Updated Drafts

Vince, Andrew, and Les,

Please see the attached redlines, and the responses below. I believe the state is still reviewing the drafts.

CD and PCMP Appendix

We accepted almost all of your proposed changes. A couple notes/explanations:

- CD Paragraph 20 – If we're going to include the sentence allowing for a force majeure, we need to use the "best efforts" language rather than "diligent efforts." "Best efforts" has been used in other CDs, and it mirrors the language in the Force Majeure section itself.
- CD Paragraph 21 – Interest needs to accrue from the Effective Date, so we can't accept this deletion. The City can pay immediately upon entry and avoid any interest (which would be minimal anyway).
- PCMP wet weather sampling – We rejected this change; Middletown should take samples during wet weather both when CSOs are occurring and when they're not. At that point, the CSOs will not be discharging during most wet weather events.

SEP Questions

Thank you for the information about the proposed SEP. For our own internal process, we could use some additional details: What is in the sediments being capped? Why are those pollutants bad for public health and the environment? Will the capping prevent those sediments from being discharged into the river via the hydraulic canal? The more specifics you're able to provide, the better.

Total Civil Penalty

We appreciate the City's explanation that it would be agreeing to perform a SEP with a significant price tag of Ex. 7(A) However, the City's offer of a Ex. 7(A) cash penalty is not acceptable. Under the SEP Policy, a SEP may only offset up to 40% of the total penalty amount. So in this case, pursuant to the City's offer, EPA would consider the total penalty to be Ex. 7(A) in cash and Ex. 7(A) in SEP "credit"). This number is less than the Ex. 7(A) offered previously by the City. Again, we recognize that the City would be agreeing to spend additional money on a SEP, which is why we are willing to accept a penalty that is much lower than our original offers, but the cash portion of the City's penalty must be significantly higher.

Thanks,
Nick

Nicholas A. McDaniel
Trial Attorney

Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

---

46 Offices in 20 Countries

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Squire Patton Boggs (US) LLP is part of the international legal practice Squire Patton Boggs, which operates worldwide through a number of separate legal entities. Please visit www.squirepattonboggs.com for more information.

#US

Message

From: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]
Sent: 12/12/2017 5:16:03 PM
To: Prichard, Gary [prichard.gary@epa.gov]
Subject: RE: Middletown - Final CD Package
Attachments: ENV_ENFORCEMENT-#2706519-v2-Middletown_-_12-8-17_Consent_Decree.docx

Hi Gary – Here's the updated version, no signature pages yet. Do I have signature info for the region and HQ?

From: Prichard, Gary [mailto:prichard.gary@epa.gov]
Sent: Tuesday, December 12, 2017 12:05 PM
To: McDaniel, Nicholas A. (ENRD) <NMcDaniel@ENRD.USDOJ.GOV>
Subject: Re: Middletown - Final CD Package

Nick -Do you have an updated version of the CD, with all of the changes and signature pages? I'm hoping to get it into sign-off early this afternoon.

Thanks,
Gary

From: Prichard, Gary
Sent: Friday, December 8, 2017 3:53:01 PM
To: McDaniel, Nicholas A. (ENRD)
Subject: Re: Middletown - Final CD Package

No rush. It won't get into the review package I've put together until next week.

From: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Sent: Friday, December 8, 2017 3:47:09 PM
To: Prichard, Gary
Subject: RE: Middletown - Final CD Package

Hi Gary – I've been in meetings all day today, but I'm hoping to have an updated CD in the next hour before I leave. I'll send it to you as soon as it's ready.

From: Prichard, Gary [mailto:prichard.gary@epa.gov]
Sent: Friday, December 08, 2017 3:01 PM
To: McDaniel, Nicholas A. (ENRD) <NMcDaniel@ENRD.USDOJ.GOV>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Moody, Jonathan <moody.jonathan@epa.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; mark klingenstein <mark.j.klingenstein@leidos.com>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Final CD Package

Have you made the changes to the CD that Vince noted in his message and Sarah later noted, and included signature pages? I'd like to put that into the sign off package today.

From: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Sent: Friday, December 8, 2017 1:50:04 PM
To: Prichard, Gary; Gonzalez, Sarah; Moody, Jonathan; Robert.Darnell@USDOJ.GOV; mark klingenstein; Valdes, Carla
Subject: RE: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

From: Prichard, Gary [mailto:prichard.gary@epa.gov]
Sent: Friday, December 08, 2017 2:40 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; McDaniel, Nicholas A. (ENRD) <NMcDaniel@ENRD.USDOJ.GOV>; Moody, Jonathan <moody.jonathan@epa.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; mark klingenstein <mark.j.klingenstein@leidos.com>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

From: Gonzalez, Sarah
Sent: Friday, December 8, 2017 1:27:38 PM
To: Prichard, Gary; McDaniel, Nicholas A. (ENRD); Moody, Jonathan; Robert.Darnell@USDOJ.GOV; mark klingenstein; Valdes, Carla
Subject: RE: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Friday, December 08, 2017 2:24 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>; Moody, Jonathan <moody.jonathan@epa.gov>; Robert.Darnell@USDOJ.GOV; mark klingenstein <mark.j.klingenstein@leidos.com>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Gary

From: Gonzalez, Sarah
Sent: Wednesday, December 6, 2017 3:25:04 PM
To: McDaniel, Nicholas A. (ENRD); Moody, Jonathan; Robert.Darnell@USDOJ.GOV; mark klingenstein; Prichard, Gary; Valdes, Carla
Subject: RE: Middletown - Final CD Package

will do!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, December 06, 2017 4:09 PM
To: Moody, Jonathan <moody.jonathan@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Robert.Darnell@USDOJ.GOV; mark klingenstein <mark.j.klingenstein@leidos.com>; Prichard, Gary <prichard.gary@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: FW: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Nick

From: McDaniel, Nicholas A. (ENRD)
Sent: Wednesday, December 06, 2017 11:22 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; 'Etter, Andrew' <andrew.etter@squirepb.com>
Cc: Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>
Subject: Middletown - Final CD Package

Vince and Andrew,

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3. Finally, in the SEP attachment, Appendix D, I deleted the previous paragraph 11, which explained why the project has a nexus with the alleged violations. That's something that's helpful for us internally, but it's not necessary for the appendix itself.

Thanks,
Nick

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Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
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(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

Message

From: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
Sent: 11/15/2017 3:25:37 PM
To: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]; Prichard, Gary [prichard.gary@epa.gov]; Robert.Darnell@USDOJ.GOV
CC: Moody, Jonathan [moody.jonathan@epa.gov]; Valdes, Carla [valdes.carla@epa.gov]
Subject: FW: Middletown - Updated SEP Summary
Attachments: Middletown, OH - SEP .docx

All,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW

Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 5:36 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah -

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:56 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Here is the information you requested.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
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To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
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Sarah –

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I will. But not until next week. Is that ok?

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Senior Counsel
Crosscutting Policy Staff
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Subject: FW: Middletown - Updated SEP Summary

Good afternoon Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thank you in advance,

Sarah Gonzalez
Attorney-Adviser
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Subject: RE: Middletown - Updated Drafts

INADMISSIBLE SETTLEMENT COMMUNICATION

Nick:

Attached please find a letter responding to your request for additional information concerning the City's proposed SEP. Please let me know if you have any questions. Thanks.

Vince

SQUIRE PATTON BOGGS

Vincent Atriano
Partner
Squire Patton Boggs (US) LLP

2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
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O +1 614 365 2700
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vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, October 18, 2017 10:59 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Updated Drafts

Vince, Andrew, and Les,

Please see the attached redlines, and the responses below. I believe the state is still reviewing the drafts.

CD and PCMP Appendix

We accepted almost all of your proposed changes. A couple notes/explanations:

- CD Paragraph 20 – If we're going to include the sentence allowing for a force majeure, we need to use the "best efforts" language rather than "diligent efforts." "Best efforts" has been used in other CDs, and it mirrors the language in the Force Majeure section itself.
- CD Paragraph 21 – Interest needs to accrue from the Effective Date, so we can't accept this deletion. The City can pay immediately upon entry and avoid any interest (which would be minimal anyway).
- PCMP wet weather sampling – We rejected this change; Middletown should take samples during wet weather both when CSOs are occurring and when they're not. At that point, the CSOs will not be discharging during most wet weather events.

SEP Questions

Thank you for the information about the proposed SEP. For our own internal process, we could use some additional details: What is in the sediments being capped? Why are those pollutants bad for public health and the environment? Will the capping prevent those sediments from being discharged into the river via the hydraulic canal? The more specifics you're able to provide, the better.

Total Civil Penalty

We appreciate the City's explanation that it would be agreeing to perform a SEP with a significant price tag of Ex. 7(A) However, the City's offer of a Ex. 7(A) cash penalty is not acceptable. Under the SEP Policy, a SEP may only offset up to 40% of the total penalty amount. So in this case, pursuant to the City's offer, EPA would

consider the total penalty to be Ex. 7(A) in cash and Ex. 7(A) n SEP "credit"). This number is less than the Ex. 7(A) offered previously by the City. Again, we recognize that the City would be agreeing to spend additional money on a SEP, which is why we are willing to accept a penalty that is much lower than our original offers, but the cash portion of the City's penalty must be significantly higher.

Thanks,
Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

---
46 Offices in 20 Countries

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Squire Patton Boggs (US) LLP is part of the international legal practice Squire Patton Boggs, which operates worldwide through a number of separate legal entities. Please visit www.squirepattonboggs.com for more information.

#US

Message

From: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
Sent: 12/8/2017 8:53:08 PM
To: Prichard, Gary [prichard.gary@epa.gov]
Subject: RE: Middletown - Final CD Package

Glad it was helpful and thanks for sharing! Have a good weekend!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Friday, December 08, 2017 3:51 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: Re: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Hope you have a great weekend!

Gary

From: Gonzalez, Sarah
Sent: Friday, December 8, 2017 1:27 PM
To: Prichard, Gary; McDaniel, Nicholas A. (ENRD); Moody, Jonathan; Robert.Darnell@USDOJ.GOV; mark klingenstein; Valdes, Carla
Subject: RE: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW

Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Friday, December 08, 2017 2:24 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>; Moody, Jonathan <moody.jonathan@epa.gov>; Robert.Darnell@USDOJ.GOV; mark klingenstein <mark.j.klingenstein@leidos.com>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Gary

From: Gonzalez, Sarah
Sent: Wednesday, December 6, 2017 3:25:04 PM
To: McDaniel, Nicholas A. (ENRD); Moody, Jonathan; Robert.Darnell@USDOJ.GOV; mark klingenstein; Prichard, Gary; Valdes, Carla
Subject: RE: Middletown - Final CD Package

will do!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, December 06, 2017 4:09 PM
To: Moody, Jonathan <moody.jonathan@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Robert.Darnell@USDOJ.GOV; mark klingenstein <mark.j.klingenstein@leidos.com>; Prichard, Gary <prichard.gary@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: FW: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Nick

From: McDaniel, Nicholas A. (ENRD)
Sent: Wednesday, December 06, 2017 11:22 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; 'Etter, Andrew' <andrew.etter@squirepb.com>
Cc: Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>
Subject: Middletown - Final CD Package

Vince and Andrew,

Attached are the documents that would make up our CD package to be lodged in this case. We're doing a final review, but we believe these docs are ready to be finalized and signed. As I discussed with you on the phone last week, if the City is able to accept a Ex. 7(A) cash penalty, plus the SEP, and if you can confirm the attached documents are good to go, we can finalize and PDF the documents and work on getting signatures.

I want to point out three changes in the attached – these are the only three changes made since the last time you received (or sent) any of the documents:

1. We deleted the parenthetical in the PCMP appendix that the city requested we delete on a phone call a while ago. Please confirm that this addresses your concern.
2. In the LTCP Table, Appendix A, the "Critical Milestones" column previously stated "TBD." I replaced "TBD" with "See Appendix C" (the construction schedule provided by Middletown).
3. Finally, in the SEP attachment, Appendix D, I deleted the previous paragraph 11, which explained why the project has a nexus with the alleged violations. That's something that's helpful for us internally, but it's not necessary for the appendix itself.

Thanks,
Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

Message

From: Prichard, Gary [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6642746B4287469B99C71A23DEAA882D-GPRICHAR]
Sent: 12/8/2017 8:51:19 PM
To: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
Subject: Re: Middletown - Final CD Package
Attachments: Middletown- CD transmittal memo 12 08 2017.doc

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Hope you have a great weekend!

Gary

From: Gonzalez, Sarah
Sent: Friday, December 8, 2017 1:27 PM
To: Prichard, Gary; McDaniel, Nicholas A. (ENRD); Moody, Jonathan; Robert.Darnell@USDOJ.GOV; mark klingenstein; Valdes, Carla
Subject: RE: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
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gonzalez.sarah@epa.gov

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Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

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will do!

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Sent: Wednesday, December 06, 2017 4:09 PM
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Subject: FW: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Nick

From: McDaniel, Nicholas A. (ENRD)
Sent: Wednesday, December 06, 2017 11:22 AM
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Cc: Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>
Subject: Middletown - Final CD Package

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Trial Attorney
Environmental Enforcement Section
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United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

Message

From: Prichard, Gary [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6642746B4287469B99C71A23DEAA882D-GPRICHAR]
Sent: 12/8/2017 4:49:49 PM
To: Kuefler, Patrick [kuefler.patrick@epa.gov]; McKim, Krista [mckim.krista@epa.gov]; Valdes, Carla [valdes.carla@epa.gov]; Moody, Jonathan [moody.jonathan@epa.gov]
CC: Mendoza, Stephen [mendoza.stephen@epa.gov]
Subject: Fw: Middletown - Final CD Package
Attachments: ENV_ENFORCEMENT-#2694664-v1-Middletown_-_10-18-17_CD_Clean.docx; Middletown - 12-6-17 LTCP Table Attachment Appendix A.docx; Middletown - 12-6-17 PCMP Draft Clean Appendix B.docx; Middletown - 12-6-17 Construction Schedule Attachment Appendix C.pdf; Middletown - 12-6-17 SEP Attachment Appendix D.docx; Middletown - 12-6-17 SEP Attachment Appendix D Figures.pdf

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Gary

From: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Sent: Wednesday, December 6, 2017 3:08 PM
To: Moody, Jonathan; Gonzalez, Sarah; Robert.Darnell@USDOJ.GOV; mark klingenstein; Prichard, Gary; Valdes, Carla
Subject: FW: Middletown - Final CD Package

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Nick

From: McDaniel, Nicholas A. (ENRD)
Sent: Wednesday, December 06, 2017 11:22 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; 'Etter, Andrew' <andrew.etter@squirepb.com>
Cc: Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>
Subject: Middletown - Final CD Package

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Thanks,
Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

Message

From: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
Sent: 12/7/2017 8:18:52 PM
To: Prichard, Gary [prichard.gary@epa.gov]
Subject: RE: Middletown - Updated SEP Summary

Gary,

Thank you for covering this while I was out on travel last month! I have added your memo and Caroline's emails to my case file.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Thursday, November 16, 2017 2:53 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>; Robert.Darnell@USDOJ.GOV; Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Attached and pasted below is the new write up.

Thanks,
Gary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

From: Prichard, Gary
Sent: Thursday, November 16, 2017 1:42:34 PM
To: Makepeace, Caroline
Cc: Gonzalez, Sarah; McDaniel, Nicholas A. (ENRD); Robert.Darnell@USDOJ.GOV; Moody, Jonathan; Valdes, Carla
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Gary

From: Makepeace, Caroline
Sent: Thursday, November 16, 2017 1:08:17 PM
To: Prichard, Gary
Cc: Gonzalez, Sarah; McDaniel, Nicholas A. (ENRD); Robert.Darnell@USDOJ.GOV; Moody, Jonathan; Valdes, Carla
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sent from my iPhone

On Nov 16, 2017, at 1:14 PM, Prichard, Gary <prichard.gary@epa.gov> wrote:

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

---

From: Prichard, Gary
Sent: Thursday, November 16, 2017 12:12:09 PM
To: Makepeace, Caroline; Gonzalez, Sarah; McDaniel, Nicholas A. (ENRD); Robert.Darnell@USDOJ.GOV; Moody, Jonathan; Valdes, Carla
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

---

From: Makepeace, Caroline
Sent: Thursday, November 16, 2017 12:01:13 PM
To: Prichard, Gary; Gonzalez, Sarah; McDaniel, Nicholas A. (ENRD); Robert.Darnell@USDOJ.GOV; Moody, Jonathan; Valdes, Carla
Subject: RE: Middletown - Updated SEP Summary

Gary and Sarah et al. –

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Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Prichard, Gary
Sent: Wednesday, November 15, 2017 6:37 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>; Robert.Darnell@USDOJ.GOV; Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Gary Prichard
Associate Regional Counsel
(312) 886-0570

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:15:00 PM
To: Prichard, Gary
Subject: RE: Middletown - Updated SEP Summary

sounds good. Thanks Gary.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Wednesday, November 15, 2017 3:14 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: Re: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

---

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:11:19 PM
To: Prichard, Gary
Subject: FW: Middletown - Updated SEP Summary

Gary,

here is the latest from Caroline (our SEP person).

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)

gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 15, 2017 2:59 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 2:48 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 5:36 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah -

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:56 PM

To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Caroline,

Here is the information you requested.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:37 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

will do!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 12:02 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:46 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Remind me if you haven't heard from me. There's a lot hopping, and I'm acting for Amy all week too. Thx,a nd have a good weekend.

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:12 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Next week is perfect, thank you!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
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1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:10 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

I will. But not until next week. Is that ok?

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:08 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Middletown - Updated SEP Summary

Good afternoon Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thank you in advance,

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
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WJC South 3110B (Mail Code 2243-A)
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Washington, DC 20004
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gonzalez.sarah@epa.gov

From: Atriano, Vincent [mailto:vincent.atriano@squirepb.com]
Sent: Wednesday, November 08, 2017 3:07 PM
To: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Cc: Robert.Darnell@USDOJ.GOV; Prichard, Gary <prichard.gary@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; 'Tadych, Scott' (scottt@cityofmiddletown.org) <scottt@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Subject: RE: Middletown - Updated Drafts

INADMISSIBLE SETTLEMENT COMMUNICATION

Nick:

Attached please find a letter responding to your request for additional information concerning the City's proposed SEP. Please let me know if you have any questions. Thanks.

Vince

SQUIRE PATTON BOGGS

Vincent Atriano
Partner
Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
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T +1 614 365 2783
O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, October 18, 2017 10:59 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Updated Drafts

Vince, Andrew, and Les,

Please see the attached redlines, and the responses below. I believe the state is still reviewing the drafts.

CD and PCMP Appendix

We accepted almost all of your proposed changes. A couple notes/explanations:

- CD Paragraph 20 – If we're going to include the sentence allowing for a force majeure, we need to use the "best efforts" language rather than "diligent efforts." "Best efforts" has been used in other CDs, and it mirrors the language in the Force Majeure section itself.
- CD Paragraph 21 – Interest needs to accrue from the Effective Date, so we can't accept this deletion. The City can pay immediately upon entry and avoid any interest (which would be minimal anyway).
- PCMP wet weather sampling – We rejected this change; Middletown should take samples during wet weather both when CSOs are occurring and when they're not. At that point, the CSOs will not be discharging during most wet weather events.

SEP Questions

Thank you for the information about the proposed SEP. For our own internal process, we could use some additional details: What is in the sediments being capped? Why are those pollutants bad for public health and the environment? Will the capping prevent those sediments from being discharged into the river via the hydraulic canal? The more specifics you're able to provide, the better.

Total Civil Penalty

We appreciate the City's explanation that it would be agreeing to perform a SEP with a significant price tag of Ex. 7(A) However, the City's offer of a Ex. 7(A) cash penalty is not acceptable. Under the SEP Policy, a SEP may only offset up to 40% of the total penalty amount. So in this case, pursuant to the City's offer, EPA would consider the total penalty to be Ex. 7(A) in cash and Ex. 7(A) SEP "credit"). This number is less than the Ex. 7(A) offered previously by the City. Again, we recognize that the City would be agreeing to spend additional money on a SEP, which is why we are willing to accept a penalty that is much lower than our original offers, but the cash portion of the City's penalty must be significantly higher.

Thanks,
Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

---

46 Offices in 20 Countries

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Message

From: Lawrence Helkowski [lawrence.helkowski@ohioattorneygeneral.gov]
Sent: 8/29/2017 4:17:56 PM
To: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]; Atriano, Vincent [vincent.atriano@squirepb.com]
CC: Prichard, Gary [prichard.gary@epa.gov]; Robert.Darnell@USDOJ.GOV; Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]; Landen, Les (lesl@cityofmiddletown.org) [lesl@cityofmiddletown.org]; Etter, Andrew [andrew.etter@squirepb.com]
Subject: RE: Middletown - Updated Drafts

3 pm should work for the State.

Scott

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Tuesday, August 29, 2017 12:17 PM
To: Atriano, Vincent
Cc: Prichard, Gary; Darnell, Robert (ENRD); Gonzalez, Sarah; Lawrence Helkowski; Landen, Les (lesl@cityofmiddletown.org); Etter, Andrew
Subject: RE: Middletown - Updated Drafts

Vince,

I haven't heard back from the state yet, but assuming this works for them, let's talk tomorrow, 8/30, at 3 eastern. We can use my call-in number:

Conference #: Ex. 6 Personal Privacy (PP)
Passcode: Ex. 6 Personal Privacy (PP)

Thanks,
Nick

From: Atriano, Vincent [mailto:vincent.atriano@squirepb.com]
Sent: Monday, August 28, 2017 10:48 AM
To: McDaniel, Nicholas A. (ENRD) <NMcDaniel@ENRD.USDOJ.GOV>
Cc: Prichard, Gary <prichard.gary@epa.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Subject: RE: Middletown - Updated Drafts

Nick:

The City is available for an attorneys-only call at 3:00 pm ET on Tues., Wed., Thurs. or Fri of this week. Please let us know if any of those days would work for your side. Thanks.

Vince

SQUIRE PATTON BOGGS

Vincent Atriano
Partner
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2000 Huntington Center

41 South High Street
Columbus, Ohio 43215
T +1 614 365 2783
O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Thursday, August 24, 2017 7:41 PM
To: Atriano, Vincent <vincent.atriano@squirepb.com>
Cc: Prichard, Gary <prichard.gary@epa.gov>; Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Subject: Re: Middletown - Updated Drafts

Vince,

Talking next week would be fine. The following week, I'll be out of the office most days, so let's make sure we get something on the schedule for next week.

Thanks,
Nick

Sent from my iPhone

On Aug 24, 2017, at 7:31 PM, Atriano, Vincent <vincent.atriano@squirepb.com> wrote:

> Nick:
>
> I know we were going to propose dates for an attorneys-only call this week, but we are having a call with Ohio EPA tomorrow to discuss the proposed SEP. Consequently, we will have more information to share with you next week. Would it be OK for us to shoot for next week instead? Thanks.
>
> Vince

<image001.jpg>

Vincent Atriano
Partner
Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
T +1 614 365 2783
O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: Atriano, Vincent
Sent: Wednesday, August 16, 2017 7:23 PM
To: 'McDaniel, Nicholas A. (ENRD)' <Nicholas.A.McDaniel@usdoj.gov>; Prichard, Gary <prichard.gary@epa.gov>; Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Cc: Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Subject: RE: Middletown - Updated Drafts

Nick:

Thank you for sending us the revised drafts, which we are reviewing. The City appreciates the progress made during our last meeting, as reflected in the revised drafts. We also appreciate the revised penalty proposal, although it appears we still have some work to do in that regard assuming that the City's SEP proposal is acceptable.

We are happy to have a lawyers-only call, but unfortunately we cannot make it work this week. I will be traveling tomorrow and Friday. I will check with Les on his availability and we will propose some dates for such a call next week if possible.

Regards,

Vince

<image001.jpg>

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Partner
Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
T +1 614 365 2783
O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Friday, August 11, 2017 5:07 PM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>; Prichard, Gary <prichard.gary@epa.gov>; Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov)

<lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Updated Drafts

Vince, Andrew, and Les,

Attached are updated drafts of the Consent Decree and the Post Construction Monitoring Program attachment. We've tried to incorporate all the changes that we were able to reach agreement on at our last meeting. In some places, I noted or explained changes if we were unable to make them. While I don't want to overstate things, and perhaps there are a few areas where we can tweak language, this draft represents a lot of concessions (from both sides) and we expect it to be final or very close to final. We appreciate the City's willingness to talk through issues, and we think this draft protects both sides' interests.

Also included in the draft CD is a penalty proposal from the United States. Because of the City's proposed SEP, which would serve to offset a portion of the penalty, and in an effort to reach a final settlement, we are offering to reduce the cash civil penalty to Ex. 7(A) total (Ex. 7(A) to the United States and Ex. 7(A) to Ohio). This is of course contingent upon the SEP qualifying under the policy, which we will need to discuss as we finalize the Consent Decree.

I think it probably makes sense to have a lawyers-only phone call, after you've had a chance to review. Would you be available next week, maybe Thursday or Friday?

Thanks,
Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

---

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Message

From: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
Sent: 7/20/2017 4:37:16 PM
To: Prichard, Gary [prichard.gary@epa.gov]; McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]; Robert.Darnell@USDOJ.GOV; Moody, Jonathan [moody.jonathan@epa.gov]; Valdes, Carla [valdes.carla@epa.gov]
CC: Kuefler, Patrick [kuefler.patrick@epa.gov]
Subject: RE: Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks Gary!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Thursday, July 20, 2017 12:24 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>; Robert.Darnell@USDOJ.GOV; Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Cc: Kuefler, Patrick <kuefler.patrick@epa.gov>
Subject: Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Gary

From: Gonzalez, Sarah
Sent: Thursday, July 20, 2017 8:11 AM
To: Prichard, Gary; McDaniel, Nicholas A. (ENRD); Robert.Darnell@USDOJ.GOV; Moody, Jonathan; Valdes, Carla
Subject: RE: Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Gary,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Prichard, Gary
Sent: Thursday, July 20, 2017 8:16 AM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>; Robert.Darnell@USDOJ.GOV; Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Re: Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Gary

From: Gonzalez, Sarah
Sent: Wednesday, July 19, 2017 1:43 PM
To: McDaniel, Nicholas A. (ENRD); Prichard, Gary; Robert.Darnell@USDOJ.GOV; Moody, Jonathan; Valdes, Carla
Subject: RE: Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks for clarifying Nick. This is helpful.

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, July 19, 2017 2:40 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Prichard, Gary <prichard.gary@epa.gov>; Robert.Darnell@USDOJ.GOV; Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: RE: Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

---

From: Gonzalez, Sarah [mailto:Gonzalez.Sarah@epa.gov]
Sent: Wednesday, July 19, 2017 2:31 PM
To: McDaniel, Nicholas A. (ENRD) <NMcDaniel@ENRD.USDOJ.GOV>; Prichard, Gary <prichard.gary@epa.gov>; Darnell, Robert (ENRD) <RDarnell2@ENRD.USDOJ.GOV>; Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: RE: Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Nick,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
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1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Friday, July 14, 2017 10:40 AM
To: Prichard, Gary <prichard.gary@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Robert.Darnell@USDOJ.GOV; Moody, Jonathan <moody.jonathan@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>
Subject: Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

Message

From: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
Sent: 9/25/2017 7:16:39 PM
To: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]; Prichard, Gary [prichard.gary@epa.gov]; Robert.Darnell@USDOJ.GOV
Subject: FW: Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Nick and Gary,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Monday, September 25, 2017 3:11 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Hi Sarah,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Caroline

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Thursday, September 21, 2017 3:41 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product
Importance: High

Good afternoon Caroline,

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division

WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

Message

From: Prichard, Gary [prichard.gary@epa.gov]
Sent: 12/17/2018 6:25:54 PM
To: Kuefler, Patrick [kuefler.patrick@epa.gov]
CC: Heger, Michelle [heger.michelle@epa.gov]
Subject: Ex. 5 AC/AWP
Attachments:

Ex. 5 AC/AWP

Thanks,
Gary

From: Kuefler, Patrick
Sent: Monday, December 17, 2018 12:09:58 PM
To: Prichard, Gary
Cc: Heger, Michelle
Subject Ex. 5 AC/AWP

Ex. 5 AC/AWP

Patrick F. Kuefler
Chief
Water Enforcement &
Compliance Assurance Branch

312 353-6268

Message

From: Prichard, Gary [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6642746B4287469B99C71A23DEAA882D-GPRICHAR]
Sent: 12/8/2017 9:02:07 PM
To: Valdes, Carla [valdes.carla@epa.gov]; Moody, Jonathan [moody.jonathan@epa.gov]
CC: McKim, Krista [mckim.krista@epa.gov]; Kuefler, Patrick [kuefler.patrick@epa.gov]; Mendoza, Stephen [mendoza.stephen@epa.gov]
Subject: Ex. 5 AC/AWP
Attachments:

Ex. 5 AC/AWP

Thanks,
Gary

From: Prichard, Gary
Sent: Friday, December 8, 2017 1:48 PM
To: Nelson, Leverett; Klassman, Debra
Cc: Mendoza, Stephen; Kuefler, Patrick; McKim, Krista; Moody, Jonathan; Valdes, Carla
Subject: Ex. 5 AC/AWP

Ex. 5 / Deliberative Process, Attorney Client, Attorney Work Product

Thanks,
Gary

Appointment

From: Valdes, Carla [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CVALDES]
Sent: 11/14/2017 11:39:11 PM
To: McDaniel, Nicholas A. (ENRD) [Nicholas.A.McDaniel@usdoj.gov]
Subject: Ex. 5 AC/AWP
Location: Ex. 6 Personal Privacy (PP)

Start: 11/17/2017 4:00:00 PM
End: 11/17/2017 5:00:00 PM
Show Time As: Busy

Appointment

From: Valdes, Carla [valdes.carla@epa.gov]
Sent: 12/14/2017 6:15:33 PM

Subject: Ex. 5 AC/AWP
Location: Ex. 6 Personal Privacy (PP)

Start: 11/17/2017 4:00:00 PM
End: 11/17/2017 5:00:00 PM
Show Time As: Busy

Recurrence: (none)

Message

From: Vantil, Barbara [vantil.barbara@epa.gov]
Sent: 7/6/2017 2:44:18 PM
To: Valdes, Carla [valdes.carla@epa.gov]
CC: Moody, Jonathan [moody.jonathan@epa.gov]
Subject: RE: REPLY REQUESTED: RE: Middletown - Next Steps

Not specifically. Just go ahead and do a TA. Also, if Jonathan has a chance to show you a bit of the system, that would be a very good idea.

From: Valdes, Carla
Sent: Wednesday, July 05, 2017 5:47 PM
To: Vantil, Barbara <vantil.barbara@epa.gov>
Subject: RE: REPLY REQUESTED: RE: Middletown - Next Steps

Did we ever get word back from Pat about this travel?

From: Vantil, Barbara
Sent: Wednesday, June 28, 2017 12:32 PM
To: Kuefler, Patrick <kuefler.patrick@epa.gov>
Cc: Valdes, Carla <valdes.carla@epa.gov>; Moody, Jonathan <moody.jonathan@epa.gov>
Subject: REPLY REQUESTED: RE: Middletown - Next Steps

Hi, Pat. Do we have sufficient travel funds for Carla to attend a face-to-face negotiation with Middletown? If we have funds for this, Jonathan, could we arrange for Carla to see where some of the projects will be going in.

Thanks, Barbara

From: Valdes, Carla
Sent: Wednesday, June 28, 2017 12:20 PM
To: Vantil, Barbara <vantil.barbara@epa.gov>
Subject: FW: Middletown - Next Steps

Hi Barbara—Middletown would like a full-day in-person meeting to finish up the remaining issues for the case on July 24-25th. Do we have funds available for me to attend?

From: Moody, Jonathan
Sent: Wednesday, June 28, 2017 12:02 PM
To: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Cc: Valdes, Carla <valdes.carla@epa.gov>; Prichard, Gary <prichard.gary@epa.gov>
Subject: RE: Middletown - Next Steps

I can't do the week of the 24th, I'm not sure it is necessary for me to be there at this point, much of the technical issues have been worked through, and the SEP should not be too controversial. This maybe an opportunity for Carla to come out if she is available.

Jonathan Moody, PE
Tel: (440) 250-1708
ENFORCEMENT CONFIDENTIAL/FOIA EXEMPT

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Wednesday, June 28, 2017 12:42 PM
To: Prichard, Gary <prichard.gary@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Valdes, Carla <valdes.carla@epa.gov>; Moody, Jonathan <moody.jonathan@epa.gov>; Robert.Darnell@USDOJ.GOV; Mark Klingenstein <mark.j.klingenstein@leidos.com>
Subject: Fwd: Middletown - Next Steps

See below for an email from Vince with proposed meeting dates. Let me know if you can make either or both of these days work.

I'm going to cancel our afternoon call today, but we'll check in soon.

Thanks!
Nick

Begin forwarded message:

> **From:** "Atriano, Vincent" <vincent.atriano@squirepb.com>
> **Date:** June 27, 2017 at 6:58:52 PM EDT
> **To:** "McDaniel, Nicholas A. (ENRD)" <Nicholas.A.McDaniel@usdoj.gov>, "Landen, Les (lesl@cityofmiddletown.org)" <lesl@cityofmiddletown.org>, "Etter, Andrew" <andrew.etter@squirepb.com>
> **Cc:** "Prichard, Gary" <prichard.gary@epa.gov>, "Darnell, Robert (ENRD)" <Robert.Darnell@usdoj.gov>, "'Gonzalez, Sarah'" <Gonzalez.Sarah@epa.gov>, "Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov)" <lawrence.helkowski@ohioattorneygeneral.gov>
> **Subject: RE: Middletown - Next Steps**
>
> Nick:
>
> The City is available to meet on either July 24th or 25th. Are you contemplating that the meeting will be limited to attorneys only, as we have discussed in the past, or a broader meeting?
>
> We continue to work on a proposed SEP and penalty counteroffer. We have a good candidate project in the Hydraulic Canal, but there are still some technical questions we still need to work though. We are making progress and should have some more specifics for you within the next couple of weeks.
>
> Please let us know if these proposed meeting dates will work for your side. Thanks.
>
> Vince

Vincent Atriano
Partner
Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
T +1 614 365 2783
O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [mailto:Nicholas.A.McDaniel@usdoj.gov]
Sent: Sunday, June 18, 2017 7:44 PM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Prichard, Gary <prichard.gary@epa.gov>; Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; 'Gonzalez, Sarah' <Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Next Steps

Vince, Andrew, and Les,

Thanks for sharing the redlines and the information from Brown and Caldwell on the pipe replacement and rehabilitation. We're reviewing now, and we'll let you know if we have any questions or issues as they come up. I wanted to touch base about two things:

1. **Civil Penalty and Potential SEP(s)** – Do you know when the City will be able to provide a penalty counter-offer, potentially along with information about possible SEPs?
2. **In-Person Meeting** – I think Les has mentioned a couple times before, and we agree, that a full-day in-person meeting to hash out the remaining issues would be beneficial. The governments believe we are at that point – we know there are still areas of disagreement, but we think we can reach agreement on those issues if we spend some time talking through them in-person. To that end, is the City available for an all-day settlement meeting sometime the week of July 24?

Thanks again, and let me know if there's anything you'd like to discuss.

Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096

Nicholas.A.McDaniel@usdoj.gov

---
46 Offices in 21 Countries

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Message

From: Valdes, Carla [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CVALDES]
Sent: 12/12/2017 9:12:35 PM
To: Lippert, Allison [lippert.allison@epa.gov]
Subject:
Attachments:

Ex. 5 AC/AWP

Hello Allison—

Ex. 5 AC/AWP

Thanks,
Carla Valdes

Message

From: Bending, Padmavati [bending.padmavati@epa.gov]
Sent: 8/12/2019 11:26:00 AM
To: Fried, Gregory [Fried.Gregory@epa.gov]; Argentieri, Sabrina [argentieri.sabrina@epa.gov]; Cantello, Nicole [cantello.nicole@epa.gov]; Colquitt, Cynthia [colquitt.cynthia@epa.gov]; Gross, Louise C [gross.louise@epa.gov]; Hicks, Nola [hicks.nola@epa.gov]; Mendoza, Stephen [mendoza.stephen@epa.gov]; O'Meara, Nidhi [Omeara.Nidhi@epa.gov]; Prichard, Gary [prichard.gary@epa.gov]; Steketee, John [steketee.john@epa.gov]; Trevino, Jeffery [trevino.jeffery@epa.gov]; Vezner, Kris [vezner.kris@epa.gov]
Subject: FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

fyi

Padmavati G. Bending
Associate Regional Counsel
U.S. EPA, Region 5
Office of Regional Counsel (C-14J)
77 West Jackson Blvd.,
Chicago, IL 60604

(312) 353-8917
(312) 582-5154 (fax)

From: InsideEPA.com <insideepa-alerts@iwpnews.com>
Sent: Thursday, August 8, 2019 5:12 PM
To: Bending, Padmavati <bending.padmavati@epa.gov>
Subject: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

August 8, 2019

THE WEEKLY FOCUS

An in-depth look from our editors at a specific issue facing the Agency, published weekly.

DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

AUSTIN, TX -- The Department of Justice (DOJ) is rejecting supplemental environmental projects (SEPs) in settlements it is negotiating with local governmental agencies, a move that appears to undercut department policy that says it will approve the projects as part of deals provided they comply with EPA's SEP policy, attorneys say.

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Message

From: Cantello, Nicole [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FAF97B9A89D244C28960A086AF1ACD3F-NCANTELL]
Sent: 11/1/2017 3:06:15 PM
To: Daugavietis, Andre [daugavietis.andre@epa.gov]
Subject: Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Best,

Nicole Cantello
Attorney/Advisor
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604
312/886-2870
cantello.nicole@epa.gov

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From: Daugavietis, Andre
Sent: Wednesday, November 01, 2017 9:54 AM
To: Cantello, Nicole <cantello.nicole@epa.gov>
Subject: Ex. 5 Attorney Client (AC)

nicky: Ex. 5 Attorney Client (AC)

-andre

From: Cantello, Nicole
Sent: Tuesday, October 31, 2017 11:14 AM
To: Nanda, Sushila <Nanda.Sushila@epa.gov>; Middleton, Keith <middleton.keith@epa.gov>; Daugavietis, Andre <daugavietis.andre@epa.gov>
Subject: Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Best,

Nicole Cantello
Attorney/Advisor
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604
312/886-2870
cantello.nicole@epa.gov

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From: Nanda, Sushila
Sent: Tuesday, October 31, 2017 11:08 AM
To: Cantello, Nicole <cantello.nicole@epa.gov>; Middleton, Keith <middleton.keith@epa.gov>; Daugavietis, Andre <daugavietis.andre@epa.gov>
Subject: Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Thanks, Sushila

Sushila Nanda
Senior Attorney Advisor
USEPA
OECA-OCE-WED
William Jefferson Clinton Building
12th Street and Pennsylvania Avenue, N.W.
Mail Code 2243A
Room 4111C
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Appointment

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 3/15/2017 7:10:07 PM
To: Goodwin, Phillip - LGL [Phillip.Goodwin@houstontx.gov]; Debra Baker [DBaker@BakerWotring.com]; Bingham, Tiffany - LGL [Tiffany.Bingham@houstontx.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]; King, Carol [King.Carol@epa.gov]; Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Zimny, James [zimny.james@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]

Subject: Houston -SEP/Stipulated Remedy language; call-in number

Conference Line/Code / Ex. 6

Start: 3/23/2017 6:00:00 PM
End: 3/23/2017 7:00:00 PM
Show Time As: Tentative

Appointment

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 3/15/2017 7:10:04 PM
To: Ordonez, Efren [ordonez.efren@epa.gov]; Goodwin, Phillip - LGL [Phillip.Goodwin@houstontx.gov]; Debra Baker [DBaker@BakerWotring.com]; Bingham, Tiffany - LGL [Tiffany.Bingham@houstontx.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]; King, Carol [King.Carol@epa.gov]; Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Zimny, James [zimny.james@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]
Subject: Houston -SEP/Stipulated Remedy language; call-in number: Conference Line/Code / Ex. 6
Start: 3/23/2017 6:00:00 PM
End: 3/23/2017 7:00:00 PM
Show Time As: Busy

Appointment

From: Goodwin, Phillip - LGL [Phillip.Goodwin@houstontx.gov]
Sent: 3/15/2017 7:36:49 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]

Subject: Accepted: Houston -SEP/Stipulated Remedy language; call-in number (

Conference Line/Code / Ex. 6

Start: 3/23/2017 6:00:00 PM
End: 3/23/2017 7:00:00 PM
Show Time As: Busy

Recurrence: (none)

Appointment

From: King, Carol [King.Carol@epa.gov]
Sent: 2/16/2017 9:41:44 PM
To: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]; Zimny, James [zimny.james@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]; Goodwin, Phillip - LGL [Phillip.Goodwin@houstontx.gov]; Debra Baker [DBaker@BakerWotring.com]; Ceil Price [CPrice@BakerWotring.com]; Bingham, Tiffany - LGL [Tiffany.Bingham@houstontx.gov]

Subject: City of Houston -- call re: SEP/stipulated remedy issue
Location: Conference Line/Code / Ex. 6

Start: 2/21/2017 8:30:00 PM
End: 2/21/2017 9:30:00 PM
Show Time As: Tentative

Message

From: Rog, Morgan [Rog.Morgan@epa.gov]
Sent: 2/11/2019 4:57:20 PM
To: Bingham, Tiffany - LGL [Tiffany.Bingham@houstontx.gov]; Debra Baker [DBaker@BakerWotring.com]; Goodwin, Phillip - HPW [Phillip.Goodwin@houstontx.gov]
CC: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]; King, Carol [King.Carol@epa.gov]
Subject: Response to Houston Redline Draft CD
Attachments: Houston Redline Draft Consent Decree 021119_epa response.docx

Good morning all,

Attached are notes on Houston's Redline Draft CD language for discussion later this week. Please note that given our expedited review, we are still in the process of doing a side-by-side comparison with the January 2017 draft, so there may be additional edits and/or corrections of inadvertent changes or omissions, as noted in the document.

Thank you,
Morgan

Morgan Rog
Attorney Advisor
U.S. EPA, Office of Civil Enforcement
Ph: (202) 564-7109
rog.morgan@epa.gov

Message

From: McDonald, Scott [mcdonald.scott@epa.gov]
Sent: 8/28/2019 3:20:11 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]; Chang-Vaughan, Ellen [Chang-Vaughan.Ellen@epa.gov]; Herbert, Rusty [Herbert.Rusty@epa.gov]; Henson, Tucker [Henson.Tucker@epa.gov]; Talbot, Kristine [Talbot.Kristine@epa.gov]; Quinones, Edwin [quinones.edwin@epa.gov]; Salinas, Amy [salinas.amy@epa.gov]
Subject: FW: Daily News Digest, Wednesday, Aug. 28
Attachments: DND 08282019.pdf

See first article below re: SEPs

From: Edelbrock, Judy <Edelbrock.Judy@epa.gov>
Sent: Wednesday, August 28, 2019 9:38 AM
To: Saunders, Jerry <Saunders.Jerry@epa.gov>; McDonald, Scott <mcdonald.scott@epa.gov>
Cc: Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: FW: Daily News Digest, Wednesday, Aug. 28

Articles on SEPs:

From: Hubbard, Joseph <Hubbard.Joseph@epa.gov>
Sent: Wednesday, August 28, 2019 8:23 AM
To: R6 Daily News MailList <R6_DailyNewsML@epa.gov>
Subject: Daily News Digest, Wednesday, Aug. 28

1 DOJ Narrows Use Of SEPs In Municipal Settlements, Eyes Further Limits, Inside EPA, 8/26/19
https://insideepaclimate.com/daily-news/doj-narrows-use-seps-municipal-settlements-eyes-further-limits
The Justice Department (DOJ) is further scaling back use of supplemental environmental projects (SEPs) in settlements with local government agencies, and signaling possible additional limits in the future, measures that are likely to draw opposition from municipal groups, who favor SEPs in consent decrees to mitigate penalties. In an Aug. 21 memo, Assistant Attorney General for Environment and Natural Resources Jeffrey Bossert Clark rejected claims that a 2018 water infrastructure law allows the use of SEPs and renewed prior requirements that settlements that include SEPs must win top-level approval.

2 – St. John School Board panel suggests study on moving students from school near chemical plant, Times Picayune, 8/27/19
https://www.nola.com/news/education/article_275fc7d2-c83a-11e9-8fa9-87f1f4a3225a.html
For years, environmentalists have called on the St. John the Baptist Parish School Board to relocate the 400 or so children at Fifth Ward Elementary School in Reserve, situated just blocks from the controversial Denka Performance Elastomer plant. The board has offered sympathy, but little more. Now, that might be changing.

3 Corporation commission expands notice requirements of oil, gas operators, Oklahoman, 8/28/19
https://oklahoman.com/article/5639697/corporation-commission-expands-notice-requirements-of-oil-gas-operators
Several new Oklahoma Corporation Commission rules governing the energy industry recently became effective. There are far too many changes to be adequately discussed here, but I find two of the new rules to be of particular interest concerning the required notices that must be given by operators. Those rules involve the expanded notice requirements of operators conducting hydraulic fracturing operations and the newly addressed notice requirements of operators of temporary lines used for transporting produced water.

4 — Survey: Baton Rouge area industrial plants expect some economic expansion over next six months, Advocate, 8/27/19

https://www.theadvocate.com/baton_rouge/news/business/article_7a3a08b8-c8ea-11e9-a6c9-23358425a2db.html?utm_medium=social&utm_source=twitter&utm_campaign=user-share
Industrial plant managers across 30 sites around the Baton Rouge metro area are optimistic that there will be a slight increase in economic activity during third-quarter this year, according to a survey by the Greater Baton Rouge Industry Alliance, a trade organization that represents 60 manufacturers. The survey respondents included petrochemical, paper, pharmaceutical and industrial manufacturers addressing capital expenditure and employment plans over the next six months.

5 — How an odd source of funding is helping Louisiana schools replace old diesel buses, Advocate, 8/27/19
https://www.theadvocate.com/baton_rouge/news/communities/ascension/article_df5cf69e-bec0-11e9-93d9-9bea46d33a80.html?utm_medium=social&utm_source=twitter&utm_campaign=user-share
The Ascension Parish school district had planned to buy five new diesel school buses over the next year at a cost of $500,000 to replace buses beyond repair. But, thanks to an unusual funding source, they'll now be getting twice that number of new buses at that same price. And the buses will be fueled by more environmentally friendly propane.

6 — With flood-blocking barge removed, Bayou Chene reopens for commerce after 3 months, Advocate, 8/27/19
https://www.theadvocate.com/baton_rouge/news/article_00fa5060-c8f0-11e9-96f8-c38b8da32afd.html?utm_medium=social&utm_source=twitter&utm_campaign=user-share
Bayou Chene was reopened to maritime traffic Tuesday following removal of a barge that was deliberately sunk on the waterway southeast of Morgan City to prevent backwater flooding from the Atchafalaya River, authorities said. The barge had been sunk into Bayou Chene three months ago to block high water in the river from seeping into low-lying parts of Assumption, Iberville, Lafourche, St. Mary and Terrebonne parishes southwest of Baton Rouge.

7 – S&WB admits recent flooding is 'unusual,' deserves 'thorough investigation', WWL, 8/26/19
https://www.wwltv.com/article/news/local/down-the-drain/swb-admits-recent-flooding-is-unusual-deserves-thorough-investigation/289-6dfd91f1-aac9-4d28-908c-afdcfc81c033
Citywide flooding events like what happened Monday afternoon are "extreme" and require a "thorough investigation," a Sewerage & Water Board spokesperson said. As much as 5 inches of rain fell across the metro New Orleans area between about 1:30 p.m. and 4:10 p.m. Monday, creating widespread flooding that affected many parts of New Orleans as cars stalled, gridlock formed, businesses flooded and residents dealt with all-too-familiar frustration.

8 — AMLO: Mexico reaches deal for cross-border natural gas pipelines, Chron, 8/27/19
https://www.chron.com/business/energy/article/AMLO-Mexico-reaches-deal-for-cross-border-14381313.php?cmpid=ffcp
Mexican President Andres Manuel Lopez-Obrador said his administration has reached a deal ending a $3 billion controversy over contracts for five natural gas pipelines that were built by three companies south of the border. During a Tuesday morning press conference, Lopez-Obrador announced that Mexico's federal government had reached a deal on Monday night with Canadian pipeline operator TC Energy, a Mexican subsidiary of San Diego utility company Sempra Energy and Mexican construction firm Grupo Carso. Negotiations remain ongonig with Mexico City-based contractor Fermaca.

9 — Exxon to explore carbon capture tech with startup, Chron, 8/27/19
https://www.chron.com/business/energy/article/Exxon-to-explore-carbon-capture-tech-with-startup-14381170.php?cmpid=ffcp
With oil majors under pressure to take more action on climate change, Exxon Mobil is boosting its research in carbon capture technology in a new agreement with a Berkeley, California startup to explore how to bring its specialty carbon dioxide removal technology to a commercial scale. The Irving company announced Monday that it has entered an agreement with Mosaic Materials, a chemicals and engineering company "focused on enabling greenhouse gas reductions through carbon capture and high-efficiency gas separations." Mosaic Materials has developed a process to separate carbon dioxide from air or flue gas using porous solids.

10 – Court weighs whether EPA must crack down on river temps, Greenwire, 8/27/19

https://www.eenews.net/greenwire/2019/08/27/stories/1061090741
A federal judge overstepped last year when he ordered EPA to craft temperature standards for a major river system in the Northwest, a government lawyer told the 9th U.S. Circuit Court of Appeals yesterday. "No date, no deadline. There's no duty here, Your Honors," said Justice Department attorney Jonathan Brightbill, summing up EPA's position in a fight over the Columbia and lower Snake rivers.

11 – Green, consumer groups challenge landmark N.M. law, Greenwire, 8/27/19
https://www.eenews.net/greenwire/2019/08/27/stories/1061089879
New Mexico's new landmark energy law is facing its first legal challenge as a coalition of environmental and consumer advocacy groups filed a petition yesterday with the state Supreme Court over concerns that certain provisions are unconstitutional. The groups contend language within the law, signed by Gov. Michelle Lujan Grisham (D) earlier this year, erodes the state's ability to regulate utilities and puts electric customers at risk of having to pay unchecked costs.

12 — Report: Galveston needs to improve access to public beaches, Houston Chron, 8/26/19
https://www.chron.com/neighborhood/galveston/news/article/Report-Galveston-needs-to-improve-access-to-14379275.php
A committee is calling on a Southeast Texas city to provide better public beach access, more parking and new dune protection standards. The Galveston County Daily News reports that the beach access and dune protection committee presented its suggestions to the Galveston City Council on Thursday after roughly a year of work that included visiting each beach access point.
13 Litigation: Court seeks EPA view on states' 'defeat devices' preemption, Inside EPA, 8/26/19
https://insideepaclimate.com/climate-beat/litigation-court-seeks-epa-view-states%E2%80%99-%E2%80%98defeat-devices%E2%80%99-preemption
A federal appellate court is asking the Trump administration for its views on whether states are preempted from suing automakers for their use of software "defeat devices" to cheat on emissions standards, in an ongoing case testing the ability of states and counties to impose penalties. In an Aug. 22 order in In re: EPC of Hillsborough County., et al v. Volkswagen Group. of America, et al, a three-judge panel of the U.S. Court of Appeals for the 9th Circuit invites EPA or the Justice Department (DOJ), or both, to submit amicus briefs to inform the court on a key preemption issue.

14 OPINION: Why natural gas is not the answer to climate change, Houston Chon, 8/28/19
https://www.houstonchronicle.com/opinion/outlook/article/Why-natural-gas-is-not-the-answer-to-climate-14382831.php
Don't believe the hype — producing natural gas is producing enormous problems for Texas. The huge amount of water required for gas extraction, the frequent and damaging wastewater spills and earthquakes linked to disposal, the family farms and ranches seized for pipelines, and the air pollution, fires and explosions at petrochemical plants all add up to significant damage to our air, water and land. And a growing amount of gas is going to produce plastics, much of which wind up clogging our oceans.

15 TCEQ to make final decision on medical waste facility coming to El Paso, CBS4, 8/28/19
https://cbs4local.com/news/local/tceq-to-make-final-decision-on-medical-waste-facility-coming-to-el-paso
The Texas Commission on Environmental Quality (TCEQ) will hold a final hearing in Austin to determine whether a medical waste facility will receive permission from the state to operate in El Paso. The types of medical waste that would be processed at this facility and disposed at the Greater El Paso County Landfill include: discarded human organs and other body parts and tissue removed during surgery, human blood and blood products, contaminated syringes, used scalpels, as well as animal carcasses, body parts, and bedding of animals that have been infected with agents that may produce human infection from Arizona, New Mexico, and other parts of Texas.

16 Gov. Greg Abbott's opportunity to help clean up Texas, TribTalk, 8/27/19
https://www.tribtalk.org/2019/08/27/gov-greg-abbotts-opportunity-to-help-clean-up-texas/
It's been 10 years since the Texas Commission on Environmental Quality had a leader willing to hold corporate polluters accountable. Larry Soward left the powerful three-member commission in 2009, after a six-year term distinguished by his outspoken nature and numerous 2-1 split decisions. As a public health advocate, Soward often voted in the minority.

17 ADEQ will honor groups for environmental stewardship, Magnolia Reporter, 8/28/19

http://www.magnoliareporter.com/news_and_business/local_business/article_610a25f4-c8a3-11e9-9502-3bd4e4de6cd7.html

The program, known as Arkansas NStEP, is a voluntary environmental stewardship program that recognizes and rewards organizations for their commitment to environmental leadership. Membership is open to all Arkansas organizations with a minimum of 20 full-time employees, including manufacturers, institutions of higher education, municipalities, government agencies, and nonprofits.

Message

From: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]
Sent: 8/5/2019 8:51:06 PM
To: King, Carol [King.Carol@epa.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: RE: Letter to City of Houston

I am back at my desk. Nat

From: King, Carol <King.Carol@epa.gov>
Sent: Monday, August 5, 2019 4:40 PM
To: Ordonez, Efren <Ordonez.Efren@epa.gov>; Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>
Subject: RE: Letter to City of Houston

What number can I reach you at Efren?

From: Ordonez, Efren
Sent: Monday, August 05, 2019 4:39 PM
To: King, Carol <King.Carol@epa.gov>; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Subject: RE: Letter to City of Houston

Okay

From: King, Carol <King.Carol@epa.gov>
Sent: Monday, August 05, 2019 3:38 PM
To: Ordonez, Efren <Ordonez.Efren@epa.gov>; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Subject: RE: Letter to City of Houston

Not sure. I just got back to my desk. I can call you Nat and then loop in Efren.

From: Ordonez, Efren
Sent: Monday, August 05, 2019 4:29 PM
To: King, Carol <King.Carol@epa.gov>; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Subject: RE: Letter to City of Houston

Are we using Nat's call-in number?
Efren

From: King, Carol <King.Carol@epa.gov>
Sent: Monday, August 05, 2019 2:38 PM
To: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Ordonez, Efren <Ordonez.Efren@epa.gov>
Subject: RE: Letter to City of Houston

Can we talk at 4:30 pm EST? I'm in another meeting now until 4:30 pm EST but need to catch up with both of you. Thanks!

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Monday, August 05, 2019 3:31 PM
To: Ordonez, Efren <Ordonez.Efren@epa.gov>

Cc: King, Carol <King.Carol@epa.gov>
Subject: RE: Letter to City of Houston

Ex. 5 Attorney Work Product (AWP)

Nat

From: Ordonez, Efren <Ordonez.Efren@epa.gov>
Sent: Monday, August 5, 2019 1:46 PM
To: Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>
Subject: FW: Letter to City of Houston

Ex. 5 Attorney Work Product (AWP)

From: Debra Baker <DBaker@BakerWotring.com>
Sent: Monday, August 05, 2019 12:12 PM
To: Payne, James <payne.james@epa.gov>
Cc: Goodwin, Phillip - HPW <Phillip.Goodwin@houstontx.gov>; Ordonez, Efren <Ordonez.Efren@epa.gov>; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; McDonald, Scott <mcdonald.scott@epa.gov>; Welton, Patricia <Welton.Patricia@epa.gov>
Subject: Re: Letter to City of Houston

Great thanks. Jim and Efren, can we touch base by phone today?

Sent from my iPhone

On Aug 5, 2019, at 10:40 AM, Payne, James <payne.james@epa.gov> wrote:

> It was good to see you all and thank you for your note. Adding and referring this to Efren.
>
> Sent from my iPhone
>
> On Aug 5, 2019, at 10:19 AM, Goodwin, Phillip - HPW <Phillip.Goodwin@houstontx.gov> wrote:
>
> > Good morning Jim –
> >
> > I hope you enjoyed the Superconference as much as I did. We followed up with Nat regarding the proposed Region VI letter to Houston and he responded that we would need to discuss the letter with the Region as DOJ is not involved. Can we set up a call to discuss specifics of the letter, including timing of such a letter?
> >
> > Thanks,

Phillip M. Goodwin
Regulatory Compliance Director
Houston Public Works
611 Walker, Houston TX 77002
(832) 395-3075
phillip.goodwin@houstontx.gov
<image001.png> <image002.png>

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
STATE OF TEXAS,	)	
Plaintiff,	)	
and	)	
BAYOU CITY WATERKEEPER,	)	
Plaintiff-Intervenor,	)	
v.	)	Civil Action No. 4:18-cv-03368
	)	Judge EWING WERLEIN, JR.
CITY OF HOUSTON, TEXAS,	)	
Defendant.	)	

SECOND JOINT REPORT ON THE PROGRESS
OF SETTLEMENT NEGOTIATIONS

On September 20, 2018, Plaintiffs United States and the State of Texas filed a Complaint against the City of Houston, Texas, pursuant to the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, and the Texas Water Code § 7.001 *et seq.* (ECF No. 1). Simultaneously with filing the Complaint, the United States filed an Unopposed Motion to Stay Proceedings to Allow the Parties to Complete Settlement Negotiations ("Stay Motion"). (ECF No. 2). Plaintiff State of Texas (the "State") and Defendant City of Houston ("City" or "Houston") supported the Stay Motion.

The Stay Motion advised the Court that the U.S. Department of Justice ("DOJ"), the U.S. Environmental Protection Agency ("EPA"), the Office of the Attorney General for the State of Texas, the Texas Commission on Environmental Quality ("TCEQ") and Houston (collectively, the "Parties") were engaged in ongoing settlement negotiations to address Houston's alleged violations of the CWA and the Texas Water Code. The Stay Motion further advised the Court that, prior to Hurricane Harvey, the Parties had made significant progress toward a final agreement; that negotiations were suspended for a period due to the devastating impact of Hurricane Harvey on the City and the need for Houston officials to focus attention on the health and safety of its citizens; and that the Parties recently resumed negotiations.

On September 24, 2018, the Court entered an Order Staying Litigation Pending Settlement Negotiations ("Stay Order"). (ECF No. 8). In its Stay Order the Court concluded that "granting said motion is in the best interest of judicial economy and will facilitate settlement." Stay Order at 1. The Stay Order directed the Parties to file a joint report on settlement progress every 45 days following entry of the Stay Order. *Id.* The Stay Order also stated "that any party, upon advance written notice to the parties and for good cause shown, may request a status conference or that the matter be returned to the active litigation docket." *Id.* at 2.

Since entry of the Stay Order, the Parties have continued to conduct good faith settlement negotiations. Pursuant to the Stay Order, on November 8, 2018, the Parties submitted an initial Joint Report ("First Joint Report") to the Court on the progress of their settlement discussions. At this time, the City and the Plaintiffs United States and the State of Texas ("Plaintiffs") are submitting their Second Joint Report on the status of their settlement negotiations.

BACKGROUND

The Plaintiffs filed their Complaint against Houston pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), and provisions of the Texas Water Code. The Complaint alleges violations of the CWA, provisions of the Texas Water Code, and the terms and conditions of Texas Pollutant Discharge Elimination System ("TPDES") permits issued to Houston by the TCEQ. In general, the TPDES permits contain terms and conditions that Houston must comply with in the operation of the City's wastewater treatment plants ("WWTPs") and the wastewater collection systems associated with the WWTPs. Houston has 39 WWTPs that are currently subject to TPDES permits. The Complaint alleges two categories of violations: (a) discharges of wastewater from WWTPs that exceed effluent limitations set forth in TPDES permits and (b) unauthorized discharges of untreated wastewater, namely sanitary sewer overflows ("SSOs"), from components of the collection systems associated with WWTPs.

The Plaintiffs' and the City's ongoing settlement negotiations have focused on both types of violations alleged in the Complaint. Specifically, the Plaintiffs and City have focused on the types of effluent violations that have occurred, the causes of these effluent permit exceedances, and appropriate corrective measures to be implemented to address effluent exceedances at the WWTPs. In addition, the Plaintiffs and City have focused on, among other issues, the causes of SSOs, where they are occurring, and measures to be implemented to eliminate SSOs.

On November 19, 2018, the Court granted Bayou City Waterkeeper's Opposed Motion to Intervene as Plaintiff.

PROGRESS IN SETTLEMENT NEGOTIATIONS

A. Settlement Meetings and Conference Calls

In the First Joint Report, filed on November 8, 2018, the Plaintiffs and City reported that they conducted a face-to-face settlement meeting on November 1 and 2, 2018, in Austin, Texas. The Plaintiffs and City also reported that sixteen of their representatives participated in the November meeting, and that those representatives included counsel, technical and professional staff on behalf of EPA and Houston, and an environmental consultant on behalf of the DOJ and EPA. Further, the Plaintiffs and City reported that prior to that meeting they exchanged proposed settlement language on a number of issues for discussion at the meeting.

The First Progress Report further advised the Court that the next steps would include two telephone conference calls on November 9 and November 29, 2018, involving technical staff representatives of the Plaintiffs and City, as well as an environmental consultant on behalf of DOJ and EPA, and another face-to-face meeting on December 13-14, 2018 in Houston, Texas. These three events occurred as scheduled. Both technical calls focused on exchanging information and attempting to reach agreement on Houston's performance of a capacity assessment of the Houston wastewater collection and transmission system ("WCTS"). The reason for a capacity assessment is discussed below in Section C. The Plaintiffs and City discussed a number of other potential settlement provisions, as discussed below, at the December 13-14 meeting. Fifteen of their representatives attended the meeting. In addition, two EPA representatives participated in most of the meeting by telephone, and two TCEQ representatives participated in a portion of the first day of the meeting by telephone.

B. Negotiating Teams and Summary of Progress

Initially, counsel for the United States, the State, and Houston wish to emphasize to the Court that they and others working with them are serving as negotiators for the respective Parties. Any references in this Second Joint Report to the Parties reaching agreement or near agreement on issues addressed herein and issues previously discussed mean the negotiating teams have agreed on positions they intend to recommend to the respective Parties' principals, subject to reviewing the terms of any proposed final agreement. Any final written agreement will be subject to the review and approval of the Mayor of Houston and the City's governing body and appropriate officials of the United States and the State authorized to approve final settlements. Accordingly, in this Section, "negotiating teams" is used when reference is made to any party's current or proposed position on the issues discussed below.

Since resuming settlement negotiations in August 2018 and during the stay period to date, the Plaintiffs and City have focused their discussions on compliance measures or injunctive relief to be implemented to address effluent exceedances related to the City's WWTPs and SSOs related to the WCTS. The Plaintiffs and City have worked to develop a comprehensive compliance plan or injunctive relief package, which will include the measures and relief addressed below. Subject to the Parties' ongoing discussions and required approvals, the negotiating teams have reached agreement or near agreement on all major provisions of a proposed comprehensive compliance plan or injunctive relief package, as discussed below.

C. Proposed Compliance Measures and Injunctive Relief Not Addressed in the First Joint Report

1. Capacity Assessment. The First Joint Report did not address Capacity Assessment. For the Court's information, during rainfall events, the City of Houston experiences SSOs, often large volume SSOs due to inflow and infiltration (I/I) of rainfall and groundwater sources into

the sewer collection system. A Capacity Assessment will be performed to identify WCTS components that do not have adequate capacity to convey sewage and I/I during peak rainfall events. When WCTS components do not have adequate capacity, a hydraulic bottleneck occurs causing the wastewater to back up and be discharged from manholes or other components. The Capacity Assessment is performed by evaluating the occurrences of SSOs during all wet weather events and through hydraulic modeling of the sewer system to predict what size storm would lead to sewer system flows that would exceed the existing sewer system's capacity. The Plaintiffs and the City have agreed on a recommended approach to addressing capacity assessment and have identified 9 areas that will be addressed in the City's capacity program. Furthermore, the City has agreed it will continue to evaluate the occurrence of wet weather SSOs and use monitoring technology to assist in locating additional areas where the sewer system's capacity may be deficient.

The Plaintiffs and City have agreed in principle on the elements of a proposed Capacity Assessment and the development and implementation of remedial measures based on deficiencies identified through Houston's assessment activities.

D. Update on Compliance Measures and Injunctive Relief Provisions Discussed in the November 8 Progress Report

1. Condition Assessment. The First Joint Report advised the Court that Houston's "Wastewater Collection and Transmission System," or WCTS consists of thousands of miles of force mains and gravity sewer lines, hundreds of lift stations, and other components. The First Report also advised the Court that some SSOs occur due to deficiencies in these components. Further, the First Joint Report advised the Court that the negotiating teams had discussed and were nearing agreement on the scope of a Condition Assessment that Houston would undertake

to evaluate the condition of the components of its WCTS and then develop a program for repair and rehabilitation of deficient components.

Prior to and during the December meeting, the negotiating teams continued their discussions on this issue and now report to the Court they have reached agreement with respect to recommended Condition Assessment language, subject to a few adjustments in the language.

2. Wastewater Treatment Plants. In the First Joint Report, the Court was advised that the negotiating teams had agreed on recommended corrective measures that Houston would implement to address effluent exceedances occurring at WWTPs, and that they were continuing to discuss certain additional issues related to the WWTPs. Since filing the First Joint Report, the negotiating teams have continued to discuss the WWTPs and have exchanged draft language regarding WWTP corrective measures. At the recent December meeting, the negotiating teams agreed on a recommended process for implementation of a routine system for operation and maintenance performance evaluations of each WWTP and also reached an agreement on recommended WWTP language to be included in a final settlement document.

3. Capacity Management Operation and Maintenance ("CMOM") Program. The First Joint Report advised the Court that a CMOM is a preventive maintenance program designed to ensure that the components of a wastewater collection system are properly operated and maintained, and that the negotiating teams have reached agreement on the principal provisions of a CMOM Program.

After filing the First Joint Report, the negotiating teams continued to discuss and exchange draft language to finalize agreement on a CMOM Program. At the recent December meeting, the negotiating teams reached an agreement on a recommended CMOM Program, subject to revising the language on one component of the Program and resolving one other issue.

4. Wet Weather Facilities ("WWFs"). The First Joint Report provided the Court a brief background statement on the three WWFs. Each WWF is associated with a specific WWTP and is subject to a Texas TPDES permit. During heavy rain events, excess wastewater flow from the sewer collection system may be routed to a WWF that can provide storage of these flows. If wastewater flow exceeds the storage capacity of the WWF, the excess volume of wastewater in the WWF is directed to an outfall and released to a designated water body. Before being discharged, the excess wastewater flows in the WWFs receive primary treatment and disinfection. The First Joint Report advised the Court that the negotiating teams have reached agreement for elimination of discharges from one of the WWFs by closing it as a WWF. For the remaining two WWFs, the negotiating teams agreed to recommend that Houston conduct a pilot project to determine whether certain treatment technologies can be used to ensure that future discharges meet applicable regulatory requirements. The negotiating teams advised the Court that they were still determining the details of this pilot project.

Since submission of the First Joint Report, EPA and TCEQ have coordinated on and discussed the WWFs. In addition, EPA prepared draft settlement language and provided that language to Houston shortly before the December meeting. The draft language was discussed at the December meeting. As of this time, the negotiating teams have substantially agreed on a recommended overall approach for resolving some issues related to the two WWFs and the pilot project, and they have identified specific issues which need to be further discussed and resolved. The negotiating teams will continue to discuss the WWFs and expect to reach an agreement for addressing the two WWFs in a final settlement.

E. Compliance Measures and Injunctive Relief Reported Resolved in the November Joint Report

The negotiating teams previously reported to the Court that they had reached agreement on the compliance measures and injunctive relief discussed below.

1. Early Action Projects. The negotiating teams discussed corrective measures (referred to as "Early Action Projects") that Houston would agree to implement on a short schedule to address SSOs and effluent violations. The negotiating teams have reached agreement on recommendations for Early Action Projects to be implemented.

2. Advanced Sewer System Monitoring. In recent years, Houston has implemented a pilot program involving the installation of monitoring devices at 300 manholes. These devices are designed to remotely monitor wastewater levels and send a real-time alert to a manned station when specified wastewater levels are about to be exceeded. Based on the alert, workers are able to respond to the particular manhole, thereby improving responsiveness and operations with the goal of preventing SSOs from occurring. The negotiating teams have agreed to recommend that Houston install at least 3,000 monitors across the WCTS and evaluate the effectiveness of the monitors over a period of years.

3. SSO Response Plan. The Houston negotiating team proposed an SSO Response Plan, which includes, among other things, procedures Houston would follow in responding to SSOs. The negotiating teams have reached agreement on the substantive provisions of an acceptable SSO Response Plan, and the Houston negotiating team is currently preparing a final proposed Plan.

F. Supplemental Environmental Project ("SEP")

This issue was not discussed in the First Joint Report. Pursuant to the U.S. EPA's Supplemental Environmental Project Policy 2015 Update ("2015 SEP Update"), a SEP "is an environmentally beneficial project or activity that is not required by law, but that a [settling]

defendant agrees to undertake as part of the settlement of an enforcement action." *See* 2015 SEP Update at 1 (https://www.epa.gov/sites/production/files/2015-04/documents/sepupdatedpolicy15.pdf). Prior to the Stay Order, EPA and Houston tentatively negotiated a SEP that Houston would agree to implement as part of a final settlement. In general, the SEP would involve the replacement of private laterals in certain neighborhoods that would be selected based on, among other criteria, the number of SSOs occurring in the neighborhoods during a specified period and the percentage of low income residents living in the neighborhoods. The negotiating teams have substantially agreed on the SEP language to be included in the final settlement document and expect to finalize such language prior to or at their next face-to-face settlement meeting.

G. Agreed Next Steps

The negotiating teams have scheduled their next face-to-face meeting for January 14-15, 2019 to discuss and resolve the remaining issues related to the WWFs and any other unsolved issues related to compliance measures and injunctive relief provisions.

In addition, prior to issuance of the Stay Order, the Plaintiffs and City had engaged in extensive negotiations and reached preliminary final agreement on a number of non-injunctive relief provisions that would be included in a final settlement. Such non-injunctive relief provisions include, among others, Reporting (annual reports on steps taken to implement injunctive relief provisions), Dispute Resolution, Civil Penalties, Stipulated Penalties, Modification of the settlement terms, etc. Prior to and during the January meeting, the negotiating teams intend to review these previously agreed upon provisions to determine if any changes or revisions should be made.

H. Commitment to Continue and Complete Settlement Negotiations

As stated in the First Joint Report, during the period of the Stay Order and before, the Plaintiffs and City have focused significant resources on settlement negotiations. They agree that they have continued to make progress toward reaching a settlement that will resolve the allegations in Plaintiffs' Complaint. The Plaintiffs and City also agree that reaching a settlement is feasible, and they are committed to continue their efforts. Further, the Plaintiffs and City agree that during the next forty-five days or sooner, they expect to reach or come very close to reaching a proposed final settlement.

The United States, the State of Texas and Houston have conferred and agree to this Second Joint Report.

CONCLUSION

The Plaintiffs and City will continue to keep the Court informed on the status of settlement negotiations pursuant to the Court's Stay Order.

Respectfully submitted,

FOR THE UNITED STATES

BRUCE S. GELBER
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

s/ Nathaniel Douglas
NATHANIEL DOUGLAS
Pennsylvania Bar No. 18217
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611

Washington, DC, 20004
Ph: (202) 514-4628
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Nathaniel.Douglas@usdoj.gov
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RYAN PATRICK
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Southern District of Texas

DANIEL D. HU
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1000 Louisiana, Suite 2300
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OF COUNSEL:

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Attorney-Advisor
United States Environmental Protection Agency
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

EFREN ORDÓÑEZ
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VI
1445 Ross Ave., Suite 1200
Dallas, TX 75202

FOR THE STATE OF TEXAS

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

DARREN C. MCCARTY
Deputy Attorney General for Civil Litigation

PRISCILLA M. HUBENAK
Chief, Environmental Protection Division

s/ Phillip Ledbetter
PHILLIP LEDBETTER
Assistant Attorney General
Attorney-in-Charge
State Bar No. 24041316
S.D. Bar No. 1401529
Phillip.Ledbetter@oag.texas.gov

MARY E. SMITH
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Mary.Smith@oag.texas.gov

Office of the Attorney General of Texas
Environmental Protection Division
P.O. Box 12548, MC-066
Austin, TX 78711-2548
Telephone: 512-475-4152
Facsimile: 512-320-0911

ATTORNEYS FOR THE STATE OF TEXAS

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2018, a copy of the foregoing Second Joint Report on the Progress of Settlement Negotiations was filed electronically with the Clerk of Court using the CM/ECF system. I also certify that I caused this filing to be served by e-mail and U.S. Mail on the following counsel:

Tiffany S. Bingham
Senior Assistant City Attorney
900 Bagby, 4th Floor
Houston, Texas 77002
tiffany.bingham@houstontx.gov

Debra T. Baker
Baker · Wotring LLP
700 JPMorgan Chase Tower,
600 Travis Street
Houston, TX 77002
DBaker@BakerWotring.com

s/ Nathaniel Douglas
NATHANIEL DOUGLAS

Message

From: Fuller, Mark (ENRD) [Mark.Fuller@usdoj.gov]
Sent: 12/21/2018 9:48:30 PM
To: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]
CC: Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: Houston -- Final Draft for Proofing
Attachments: ENV_ENFORCEMENT-#2787070-v1-Houston_Revisions_to_Second_Joint_Report_12-21-18.DOCX

Nat and Efren,
Here's the final for proofing:

From: Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>
Sent: Friday, December 21, 2018 4:45 PM
To: Fuller, Mark (ENRD) <MFuller@ENRD.USDOJ.GOV>
Cc: Ordonez, Efren <Ordonez.Efren@epa.gov>
Subject: FW:

Mark, can you put it in final. Efren and I will give it one last proofing. Nat

From: Goodwin, Phillip - HPW <Phillip.Goodwin@houstontx.gov>
Sent: Friday, December 21, 2018 4:18 PM
To: Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>; Debra Baker <DBaker@BakerWotring.com>
Cc: Ordonez, Efren <Ordonez.Efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>
Subject: RE:

Nat – this is perfect. No changes recommended. We appreciate the cooperation that yielded this language.

Thanks,

Phillip M. Goodwin
Regulatory Compliance Director
Houston Public Works
611 Walker, Houston TX 77002
(832) 395-3075
phillip.goodwin@houstontx.gov

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Friday, December 21, 2018 2:44 PM
To: Debra Baker <DBaker@BakerWotring.com>; Goodwin, Phillip - HPW <Phillip.Goodwin@houstontx.gov>
Cc: Ordonez, Efren <Ordonez.Efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>
Subject:

Debra and Phillip, this version contains the revised capacity lng and further DOJ non-substantive edits.

We are ready to file upon hearing from you. Thanks, Nat

Message

From: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]
Sent: 12/21/2018 8:44:27 PM
To: Debra Baker [DBaker@BakerWotring.com]; Goodwin, Phillip - HPW [Phillip.Goodwin@houstontx.gov]
CC: Ordonez, Efren [Ordonez.Efren@epa.gov]; Rog, Morgan [Rog.Morgan@epa.gov]
Attachments: ENV_ENFORCEMENT-#2787087-v1-Houston_Joint_Report_Sent_City_for_Review_(12_21_18).DOCX

Debra and Phillip, this version contains the revised capacity lng and further DOJ non-substantive edits.

We are ready to file upon hearing from you. Thanks, Nat

Message

From: Ledbetter, Phillip [Phillip.Ledbetter@oag.texas.gov]
Sent: 12/20/2018 5:25:11 PM
To: Zimny, James [zimny.james@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]; Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Rog, Morgan [Rog.Morgan@epa.gov]; King, Carol [King.Carol@epa.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]
CC: Vaughn, Alan [Vaughn.Alan@epa.gov]
Subject: RE: Draft Second Joint Report
Attachments: ENV_ENFORCEMENT-#2786731-v1-Houston_Second_Joint_Report_12_19_18__(Revised_)_mer & pll edit.docx

Hello,

Ex. 5 AC/AWP/DP

Thanks,
Phillip

From: Zimny, James [mailto:zimny.james@epa.gov]
Sent: Thursday, December 20, 2018 10:17 AM
To: Peters, Carol <Peters.Carol@epa.gov>; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Ledbetter, Phillip <Phillip.Ledbetter@oag.texas.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; King, Carol <King.Carol@epa.gov>; Ordonez, Efren <Ordonez.Efren@epa.gov>
Cc: Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: RE: Draft Second Joint Report

Ex. 5 AC/AWP/DP

Looks accurate - nothing else from me

From: Peters, Carol
Sent: Thursday, December 20, 2018 10:37 AM
To: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Ledbetter, Phillip <Phillip.Ledbetter@oag.texas.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; King, Carol <King.Carol@epa.gov>; Ordonez, Efren <ordonez.efren@epa.gov>
Cc: Zimny, James <zimny.james@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: RE: Draft Second Joint Report

Ex. 5 AC/AWP/DP

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Wednesday, December 19, 2018 8:20 PM
To: Ledbetter, Phillip <Phillip.Ledbetter@oag.texas.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; King, Carol <King.Carol@epa.gov>; Ordonez, Efren <ordonez.efren@epa.gov>
Cc: Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: Draft Second Joint Report

Ex. 5 AC/AWP/DP

Nat

Message

From: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]
Sent: 12/20/2018 3:39:57 PM
To: Peters, Carol [Peters.Carol@epa.gov]; Ledbetter, Phillip [Phillip.Ledbetter@oag.texas.gov]; Rog, Morgan [Rog.Morgan@epa.gov]; King, Carol [King.Carol@epa.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]
CC: Zimny, James [zimny.james@epa.gov]; Vaughn, Alan [Vaughn.Alan@epa.gov]
Subject: RE: Draft Second Joint Report

Carol, thanks. Nat

From: Peters, Carol <Peters.Carol@epa.gov>
Sent: Thursday, December 20, 2018 10:37 AM
To: Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>; Ledbetter, Phillip <Phillip.Ledbetter@oag.texas.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; King, Carol <King.Carol@epa.gov>; Ordonez, Efren <Ordonez.Efren@epa.gov>
Cc: Zimny, James <zimny.james@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: RE: Draft Second Joint Report

Ex. 5 AC/AWP/DP

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Wednesday, December 19, 2018 8:20 PM
To: Ledbetter, Phillip <Phillip.Ledbetter@oag.texas.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; King, Carol <King.Carol@epa.gov>; Ordonez, Efren <ordonez.efren@epa.gov>
Cc: Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: Draft Second Joint Report

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Nat

Message

From: Rog, Morgan [Rog.Morgan@epa.gov]
Sent: 12/20/2018 3:11:07 PM
To: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Ledbetter, Phillip [Phillip.Ledbetter@oag.texas.gov]; King, Carol [King.Carol@epa.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]
CC: Zimny, James [zimny.james@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]; Vaughn, Alan [Vaughn.Alan@epa.gov]
Subject: RE: Draft Second Joint Report
Attachments: ENV_ENFORCEMENT-#2786731-v1-Houston_Second_Joint_Report_12_19_18__(Revised_)_mer edit.DOCX

Hi Nat,

Ex. 5 AC/AWP/DP

Thanks,
Morgan

Morgan Rog
Attorney Advisor
U.S. EPA, Office of Civil Enforcement
Ph: (202) 564-7109
rog.morgan@epa.gov

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Wednesday, December 19, 2018 9:20 PM
To: Ledbetter, Phillip <Phillip.Ledbetter@oag.texas.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; King, Carol <King.Carol@epa.gov>; Ordonez, Efren <ordonez.efren@epa.gov>
Cc: Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: Draft Second Joint Report

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Nat

Message

From: Rog, Morgan [Rog.Morgan@epa.gov]
Sent: 2/8/2019 9:39:27 PM
To: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; King, Carol [King.Carol@epa.gov]; Zimny, James [zimny.james@epa.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]; Vaughn, Alan [Vaughn.Alan@epa.gov]; Ledbetter, Phillip [Phillip.Ledbetter@oag.texas.gov]
Subject: EPA notes on Houston's Draft CD
Attachments: Houston Redline Draft Consent Decree 020819_epa response.docx

Hi all,

Please find attached our notes on Houston's 2/5 CD draft.

Thanks,
Morgan

Morgan Rog
Attorney Advisor
U.S. EPA, Office of Civil Enforcement
Ph: (202) 564-7109
rog.morgan@epa.gov

Message

From: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]
Sent: 2/6/2019 3:45:17 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]; Rog, Morgan [Rog.Morgan@epa.gov]; King, Carol [King.Carol@epa.gov]; Zimny, James [zimny.james@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]; Vaughn, Alan [Vaughn.Alan@epa.gov]
Subject: RE: Houston

Yes. We can skip the call to give folks more time to get ready for the afternoon call. Nat

---

From: Ordonez, Efren <Ordonez.Efren@epa.gov>
Sent: Wednesday, February 6, 2019 10:31 AM
To: Rog, Morgan <Rog.Morgan@epa.gov>; Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>; King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: RE: Houston

I am assuming that we will not be having the call this morning so that we are ready for the afternoon call. Please let me know if this assumption is incorrect.
Efren

From: Rog, Morgan
Sent: Wednesday, February 06, 2019 8:19 AM
To: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Ordonez, Efren <ordonez.efren@epa.gov>; King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: RE: Houston

Good morning all – are we still having a call at 11 or just waiting until this afternoon's call at 2:30? Thanks! --Morgan

Morgan Rog
Attorney Advisor
U.S. EPA, Office of Civil Enforcement
Ph: (202) 564-7109
rog.morgan@epa.gov

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Tuesday, February 05, 2019 8:34 PM
To: Rog, Morgan <Rog.Morgan@epa.gov>; Ordonez, Efren <ordonez.efren@epa.gov>; King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: Houston

Ex. 5 Attorney Client (AC)

Ex. 5 AC/DP

Message

From: Rog, Morgan [Rog.Morgan@epa.gov]
Sent: 2/6/2019 2:43:14 PM
To: King, Carol [King.Carol@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]; Vaughn, Alan [Vaughn.Alan@epa.gov]; Zimny, James [zimny.james@epa.gov]
CC: Ordonez, Efren [Ordonez.Efren@epa.gov]; Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]
Subject: FW: Houston's revision to CD 020519
Attachments: Houston Redline Draft Consent Decree 020519.docx; Houston Clean Draft Consent Decree CLEAN 020519.docx

Attached is the City's draft CD. --Morgan

Morgan Rog
Attorney Advisor
U.S. EPA, Office of Civil Enforcement
Ph: (202) 564-7109
rog.morgan@epa.gov

From: Goodwin, Phillip - HPW <Phillip.Goodwin@houstontx.gov>
Sent: Tuesday, February 05, 2019 5:49 PM
To: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Ordonez, Efren <ordonez.efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>
Cc: Debra Baker <DBaker@BakerWotring.com>; Goodwin, Phillip - HPW <Phillip.Goodwin@houstontx.gov>
Subject: Houston's revision to CD 020519

Nat, during the Government shutdown and in our mutual interests of expediting settlement discussions of this matter, Houston began incorporating the injunctive relief provisions into the full draft Consent Decree and proceeded to update the non-injunctive provisions as well. Putting everything in one document will allow the negotiating team to have a full document for next week's meetings. Each section of the CD has a statement identifying where/when the language came from for convenient reference. There are still outstanding paragraph numbers and minor formatting issues that will need to be updated. We have attached a clean and redlined version. While each document includes a table of contents, the clean version is accurate while the redline numbering is off.

Let us know about the Monday meeting with EPA permitting staff.

Thanks, Phillip and Debra.

Phillip M. Goodwin
Regulatory Compliance Director
Houston Public Works
611 Walker, Houston TX 77002
(832) 395-3075
phillip.goodwin@houstontx.gov

Message

From: Peters, Carol [Peters.Carol@epa.gov]
Sent: 2/6/2019 2:41:21 PM
To: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Rog, Morgan [Rog.Morgan@epa.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]; King, Carol [King.Carol@epa.gov]; Zimny, James [zimny.james@epa.gov]; Vaughn, Alan [Vaughn.Alan@epa.gov]
Subject: RE: Houston

I did not get Phillip G's email with city's changes to draft CD

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Tuesday, February 5, 2019 7:34 PM
To: Rog, Morgan <Rog.Morgan@epa.gov>; Ordonez, Efren <ordonez.efren@epa.gov>; King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: Houston

Ex. 5 Attorney Client (AC)

Ex. 5 AC/DP

Ex. 5 AC/DP

Message

From: Vaughn, Alan [Vaughn.Alan@epa.gov]
Sent: 2/1/2019 2:39:42 PM
To: Peters, Carol [Peters.Carol@epa.gov]; Rog, Morgan [Rog.Morgan@epa.gov]; Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Zimny, James [zimny.james@epa.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]
CC: King, Carol [King.Carol@epa.gov]
Subject: RE: Houston Progress Report/Extended call Next Week

Ex. 5 Attorney Client (AC)

From: Peters, Carol
Sent: Friday, February 01, 2019 8:37 AM
To: Rog, Morgan <Rog.Morgan@epa.gov>; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Zimny, James <zimny.james@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>; Ordonez, Efren <ordonez.efren@epa.gov>
Cc: King, Carol <King.Carol@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

Ex. 5 Attorney Client (AC)

From: Rog, Morgan
Sent: Friday, February 1, 2019 7:51 AM
To: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Zimny, James <zimny.james@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>; Ordonez, Efren <ordonez.efren@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Cc: King, Carol <King.Carol@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

Ex. 5 Attorney Client (AC)

Morgan Rog
Attorney Advisor
U.S. EPA, Office of Civil Enforcement
Ph: (202) 564-7109
rog.morgan@epa.gov

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Thursday, January 31, 2019 5:28 PM
To: Rog, Morgan <Rog.Morgan@epa.gov>; Zimny, James <zimny.james@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>; Ordonez, Efren <ordonez.efren@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Cc: King, Carol <King.Carol@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

From: Rog, Morgan <Rog.Morgan@epa.gov>
Sent: Thursday, January 31, 2019 11:29 AM
To: Zimny, James <zimny.james@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>; Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>; Ordonez, Efren <Ordonez.Efren@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Cc: King, Carol <King.Carol@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

It looks like Wednesday 2:30 – 5pm EST works for everyone. I can send around a scheduler so it's on our calendars. --Morgan

Morgan Rog
Attorney Advisor
U.S. EPA, Office of Civil Enforcement
Ph: (202) 564-7109
rog.morgan@epa.gov

From: Zimny, James
Sent: Thursday, January 31, 2019 11:08 AM
To: Vaughn, Alan <Vaughn.Alan@epa.gov>; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Ordonez, Efren <ordonez.efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

Next week: Tuesday 3-5 PM eastern, anytime on Wednesday, after 2 PM eastern on Thursday all work for me

---

From: Vaughn, Alan
Sent: Thursday, January 31, 2019 11:01 AM
To: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Ordonez, Efren <ordonez.efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

Next week I am available most any time Tuesday and Wednesday. Thursday I am available after 2 pm EST. Friday, any time.

Alan

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Thursday, January 31, 2019 9:36 AM
To: Ordonez, Efren <ordonez.efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: Houston Progress Report/Extended call Next Week

Ex. 5 Attorney Client (AC)

Thanks, Nat

Message

From: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]
Sent: 2/1/2019 2:00:47 PM
To: Rog, Morgan [Rog.Morgan@epa.gov]
CC: Zimny, James [zimny.james@epa.gov]; Vaughn, Alan [Vaughn.Alan@epa.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]; King, Carol [King.Carol@epa.gov]
Subject: Re: Houston Progress Report/Extended call Next Week

Ex. 6 Personal Privacy (PP), hope to be in the office in a couple of hours and get you the draft report shortly after getting in.

Sent from my iPhone

On Feb 1, 2019, at 8:52 AM, Rog, Morgan <Rog.Morgan@epa.gov> wrote:

Ex. 5 Attorney Client (AC)

Morgan Rog
Attorney Advisor
U.S. EPA, Office of Civil Enforcement
Ph: (202) 564-7109
rog.morgan@epa.gov

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Thursday, January 31, 2019 5:28 PM
To: Rog, Morgan <Rog.Morgan@epa.gov>; Zimny, James <zimny.james@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>; Ordonez, Efren <ordonez.efren@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Cc: King, Carol <King.Carol@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

Ex. 5 Attorney Client (AC)

From: Rog, Morgan <Rog.Morgan@epa.gov>
Sent: Thursday, January 31, 2019 11:29 AM
To: Zimny, James <zimny.james@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>; Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>; Ordonez, Efren <Ordonez.Efren@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Cc: King, Carol <King.Carol@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

It looks like Wednesday 2:30 – 5pm EST works for everyone. I can send around a scheduler so it's on our calendars. --Morgan

Morgan Rog
Attorney Advisor
U.S. EPA, Office of Civil Enforcement
Ph: (202) 564-7109
rog.morgan@epa.gov

From: Zimny, James
Sent: Thursday, January 31, 2019 11:08 AM
To: Vaughn, Alan <Vaughn.Alan@epa.gov>; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Ordonez, Efren <ordonez.efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

Next week: Tuesday 3-5 PM eastern, anytime on Wednesday, after 2 PM eastern on Thursday all work for me

---

From: Vaughn, Alan
Sent: Thursday, January 31, 2019 11:01 AM
To: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Ordonez, Efren <ordonez.efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

Next week I am available most any time Tuesday and Wednesday. Thursday I am available after 2 pm EST. Friday, any time.

Alan

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Thursday, January 31, 2019 9:36 AM
To: Ordonez, Efren <ordonez.efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: Houston Progress Report/Extended call Next Week

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Thanks, Nat

Message

From: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]
Sent: 1/31/2019 7:05:19 PM
To: Rog, Morgan [Rog.Morgan@epa.gov]; Zimny, James [zimny.james@epa.gov]; Vaughn, Alan [Vaughn.Alan@epa.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]
CC: King, Carol [King.Carol@epa.gov]
Subject: RE: Houston Progress Report/Extended call Next Week

Thanks all. Nat

From: Rog, Morgan <Rog.Morgan@epa.gov>
Sent: Thursday, January 31, 2019 11:29 AM
To: Zimny, James <zimny.james@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>; Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>; Ordonez, Efren <Ordonez.Efren@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Cc: King, Carol <King.Carol@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

It looks like Wednesday 2:30 – 5pm EST works for everyone. I can send around a scheduler so it's on our calendars. --Morgan

Morgan Rog
Attorney Advisor
U.S. EPA, Office of Civil Enforcement
Ph: (202) 564-7109
rog.morgan@epa.gov

From: Zimny, James
Sent: Thursday, January 31, 2019 11:08 AM
To: Vaughn, Alan <Vaughn.Alan@epa.gov>; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Ordonez, Efren <ordonez.efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

Next week: Tuesday 3-5 PM eastern, anytime on Wednesday, after 2 PM eastern on Thursday all work for me

---

From: Vaughn, Alan
Sent: Thursday, January 31, 2019 11:01 AM
To: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Ordonez, Efren <ordonez.efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

Next week I am available most any time Tuesday and Wednesday. Thursday I am available after 2 pm EST. Friday, any time.

Alan

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Thursday, January 31, 2019 9:36 AM
To: Ordonez, Efren <ordonez.efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Zimny, James

<zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: Houston Progress Report/Extended call Next Week

Ex. 5 Attorney Client (AC)

Thanks, Nat

Message

From: Rog, Morgan [Rog.Morgan@epa.gov]
Sent: 1/31/2019 4:07:07 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]; Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Zimny, James [zimny.james@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]; Vaughn, Alan [Vaughn.Alan@epa.gov]
CC: King, Carol [King.Carol@epa.gov]
Subject: RE: Houston Progress Report/Extended call Next Week

Hi all,

I'm available Tuesday any time after 11am EST and Wednesday from 9 – 12 and then again from 2-5pm EST.

Thanks,
Morgan

Morgan Rog
Attorney Advisor
U.S. EPA, Office of Civil Enforcement
Ph: (202) 564-7109
rog.morgan@epa.gov

From: Ordonez, Efren
Sent: Thursday, January 31, 2019 10:58 AM
To: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: RE: Houston Progress Report/Extended call Next Week

Next week I am not available Thursday afternoon, but I am available the rest of the week. I suggest scheduling the call as early as possible in the week, so I suggest Tuesday or Wednesday.
Efren

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Thursday, January 31, 2019 9:36 AM
To: Ordonez, Efren <ordonez.efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: Houston Progress Report/Extended call Next Week

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Thanks, Nat

Message

From: Peters, Carol [Peters.Carol@epa.gov]
Sent: 1/31/2019 3:45:49 PM
To: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]; Rog, Morgan [Rog.Morgan@epa.gov]; Zimny, James [zimny.james@epa.gov]; Vaughn, Alan [Vaughn.Alan@epa.gov]
Subject: RE: Houston Progress Report/Extended call Next Week

Tuesday: open all morning
Wednesday: Open all afternoon
Thursday; open all afternoon
Friday; open all day

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Thursday, January 31, 2019 9:36 AM
To: Ordonez, Efren <ordonez.efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>
Subject: Houston Progress Report/Extended call Next Week

Ex. 5 Attorney Client (AC)

Thanks, Nat

Message

From: King, Carol [King.Carol@epa.gov]
Sent: 6/25/2018 4:10:53 PM
To: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]
CC: Zimny, James [zimny.james@epa.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]; Rog, Morgan [Rog.Morgan@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]; Palit, Ted [palit.ted@epa.gov]
Subject: Re: Response to Houston's offer

Thanks Nat.

Sent from my iPhone

On Jun 25, 2018, at 10:49 AM, Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov> wrote:

James, thanks.

Ex. 5 AC/DP

From: Zimny, James <zimny.james@epa.gov>
Sent: Monday, June 25, 2018 9:59 AM
To: Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>; Ordonez, Efren <Ordonez.Efren@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; King, Carol <King.Carol@epa.gov>
Cc: Peters, Carol <Peters.Carol@epa.gov>; Palit, Ted <palit.ted@epa.gov>
Subject: Re: Response to Houston's offer

Ex. 5 Attorney Client (AC)

Also I will be available August 20 and 21 for a meeting

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Friday, June 22, 2018 5:11:13 PM
To: Ordonez, Efren; Rog, Morgan; King, Carol; Zimny, James
Cc: Peters, Carol; Palit, Ted
Subject: RE: Response to Houston's offer

Efren, thanks. Mat

From: Ordonez, Efren <Ordonez.Efren@epa.gov>
Sent: Friday, June 22, 2018 4:50 PM
To: Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>; Rog, Morgan <Rog.Morgan@epa.gov>; King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>

Cc: Peters, Carol <Peters.Carol@epa.gov>; Palit, Ted <palit.ted@epa.gov>
Subject: Response to Houston's offer

Ex. 5 Attorney Client (AC)

Message

From: Zimny, James [zimny.james@epa.gov]
Sent: 6/25/2018 1:58:31 PM
To: Douglas, Nathaniel (ENRD) [nathaniel.douglas@usdoj.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]; Rog, Morgan [Rog.Morgan@epa.gov]; King, Carol [King.Carol@epa.gov]
CC: Peters, Carol [Peters.Carol@epa.gov]; Palit, Ted [palit.ted@epa.gov]
Subject: Re: Response to Houston's offer
Attachments: EPA Response to City of Houston Comprehensive Wastewater System Compliance Plan_OECA.docx

Hi Everyone,

Ex. 5 Attorney Client (AC)

-James

Also I will be available August 20 and 21 for a meeting

From: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Sent: Friday, June 22, 2018 5:11:13 PM
To: Ordonez, Efren; Rog, Morgan; King, Carol; Zimny, James
Cc: Peters, Carol; Palit, Ted
Subject: RE: Response to Houston's offer

Efren, thanks. Mat

From: Ordonez, Efren <Ordonez.Efren@epa.gov>
Sent: Friday, June 22, 2018 4:50 PM
To: Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>; Rog, Morgan <Rog.Morgan@epa.gov>; King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>
Cc: Peters, Carol <Peters.Carol@epa.gov>; Palit, Ted <palit.ted@epa.gov>
Subject: Response to Houston's offer

Ex. 5 Attorney Client (AC)

Message

From: Palit, Ted [palit.ted@epa.gov]
Sent: 6/22/2018 5:50:19 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]
Subject: RE: Houston - response regarding CMOM, WWFs, SEP, and reporting

2:30 is OK

Ted

From: Ordonez, Efren
Sent: Friday, June 22, 2018 11:18 AM
To: Peters, Carol <Peters.Carol@epa.gov>; Palit, Ted <palit.ted@epa.gov>
Subject: Re: Houston - response regarding CMOM, WWFs, SEP, and reporting

2:30 is fine with me.
Efren

From: Peters, Carol
Sent: Friday, June 22, 2018 10:25:22 AM
To: Ordonez, Efren; Palit, Ted
Subject: RE: Houston - response regarding CMOM, WWFs, SEP, and reporting

Ex. 5 Attorney Client (AC)

From: Ordonez, Efren
Sent: Wednesday, June 20, 2018 5:16 PM
To: Peters, Carol <Peters.Carol@epa.gov>; Palit, Ted <palit.ted@epa.gov>
Subject: Houston - response regarding CMOM, WWFs, SEP, and reporting

Ex. 5 Attorney Client (AC)

Message

From: Peters, Carol [Peters.Carol@epa.gov]
Sent: 6/22/2018 3:21:09 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]; Palit, Ted [palit.ted@epa.gov]
Subject: RE: Houston - response regarding CMOM, WWFs, SEP, and reporting

I have a Ft Smith call, currently booked for 12:30-1:30. 1:30 with Este and David E before David leaves for the airport. I think I would be available 2:30 pm

---

From: Ordonez, Efren
Sent: Friday, June 22, 2018 10:15 AM
To: Palit, Ted <palit.ted@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Subject: Re: Houston - response regarding CMOM, WWFs, SEP, and reporting

Are you available this afternoon to discuss the WWF response? If so, how about5 1:00 pm?

Efren

From: Palit, Ted
Sent: Thursday, June 21, 2018 9:31:28 AM
To: Ordonez, Efren; Peters, Carol
Subject: RE: Houston - response regarding CMOM, WWFs, SEP, and reporting

Hi Efren,

Ex. 5 Attorney Client (AC)

Ted

From: Ordonez, Efren
Sent: Wednesday, June 20, 2018 5:16 PM
To: Peters, Carol <Peters.Carol@epa.gov>; Palit, Ted <palit.ted@epa.gov>
Subject: Houston - response regarding CMOM, WWFs, SEP, and reporting

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Efren

Message

From: Peters, Carol [Peters.Carol@epa.gov]
Sent: 9/12/2019 2:36:01 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: FW: Houston - Waterkeeper request for extension of public comment period

Ex. 5 Deliberative Process (DP)

From: Saunders, Jerry <Saunders.Jerry@epa.gov>
Sent: Thursday, September 12, 2019 6:08 AM
To: Peters, Carol <Peters.Carol@epa.gov>
Cc: Seager, Cheryl <Seager.Cheryl@epa.gov>; Gilrein, Stephen <gilrein.stephen@epa.gov>
Subject: Re: Houston - Waterkeeper request for extension of public comment period

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

On Sep 11, 2019, at 6:36 PM, Peters, Carol <Peters.Carol@epa.gov> wrote:

Ex. 5 Deliberative Process (DP)

From: Saunders, Jerry <Saunders.Jerry@epa.gov>
Sent: Wednesday, September 11, 2019 2:19 PM
To: Peters, Carol <Peters.Carol@epa.gov>
Subject: Fwd: Houston - Waterkeeper request for extension of public comment period

Thoughts?

Sent from my iPhone

Begin forwarded message:

From: "Ordonez, Efren" <Ordonez.Efren@epa.gov>
Date: September 11, 2019 at 3:13:22 PM EDT
To: "Seager, Cheryl" <Seager.Cheryl@epa.gov>, "Gilrein, Stephen" <gilrein.stephen@epa.gov>, "Welton, Patricia" <Welton.Patricia@epa.gov>, "McDonald, Scott" <mcdonald.scott@epa.gov>, "Peters, Carol" <Peters.Carol@epa.gov>, "Saunders,

Jerry" <Saunders.Jerry@epa.gov>
Subject: Houston - Waterkeeper request for extension of public comment period

Ex. 5 Attorney Client (AC)

Efren Ordóñez
Senior Attorney (ORC)
EPA, Region 6
(214)665-2181

Message

From: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]
Sent: 3/13/2017 7:27:07 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]; King, Carol [King.Carol@epa.gov]
Subject: RE: Houston - revised SEP and Stipulated Remedy Language

Ex. 5 Attorney Client (AC)

From: Ordonez, Efren [mailto:Ordonez.Efren@epa.gov]
Sent: Monday, March 13, 2017 2:05 PM
To: Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>; King, Carol <King.Carol@epa.gov>
Subject: FW: Houston - revised SEP and Stipulated Remedy Language

Ex. 5 Attorney Client (AC)

From: Goodwin, Phillip - LGL [mailto:Phillip.Goodwin@houstontx.gov]
Sent: Monday, March 13, 2017 12:58 PM
To: Ordonez, Efren <Ordonez.Efren@epa.gov>; Debra Baker <dbaker@bakerwotring.com>; Bingham, Tiffany - LGL <Tiffany.Bingham@houstontx.gov>
Cc: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Goodwin, Phillip - LGL <Phillip.Goodwin@houstontx.gov>
Subject: RE: Houston - revised SEP and Stipulated Remedy Language

Efren – It's Spring Break and Carol Haddock is out this week. I propose a call on Thursday, March 23 any time between 11-2 (Central). Please let me know if that works for your team. I intend to have the revised Exhibit S to you before that time.

Thanks,

Phillip M. Goodwin, P.G.
Assistant City Attorney
City of Houston Legal Department
VOICE: 832-393-6285
FAX: 832-393-6259
phillip.goodwin@houstontx.gov

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From: Ordonez, Efren [mailto:Ordonez.Efren@epa.gov]
Sent: Monday, March 13, 2017 12:50 PM
To: Goodwin, Phillip - LGL; Debra Baker; Bingham, Tiffany - LGL
Cc: Douglas, Nathaniel (ENRD); King, Carol; Zimny, James; Makepeace, Caroline; Peters, Carol
Subject: Houston - revised SEP and Stipulated Remedy Language

We have had a chance to review the language that you provided regarding the SEP and Stipulated Remedy. Attached please find our edits and comments. Are you available to have a small group discussion regarding this language tomorrow, Tuesday, any time between 1:30 pm -3:30 pm CST or this Wednesday from 10:00-11:00 am CST? The participants for the U.S. will be Caroline Makepeace, Carol Peters, and me. Once you let me know the time that you are available, I will send a scheduler.

Also, please let us know when you will provide the appendix that lists the census blocks for the stipulated remedy.
Efren

From: Goodwin, Phillip - LGL [mailto:Phillip.Goodwin@houstontx.gov]
Sent: Monday, March 06, 2017 4:18 PM
To: Nat Douglas <nathaniel.douglas@usdoj.gov>; Ordonez, Efren <Ordonez.Efren@epa.gov>; King, Carol <King.Carol@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Goodwin, Phillip - LGL <Phillip.Goodwin@houstontx.gov>; Debra Baker <dbaker@bakerwotring.com>; Bingham, Tiffany - LGL <Tiffany.Bingham@houstontx.gov>
Subject: SEP Exhibit 2 CBG Selection and SEP Implementation 030617

All –

Please find attached SEP Exhibit 2. Caroline, please look at the tables and let me know if the CBG column needs to be broken down to list individual census blocks in any of the tables. We're currently working on a revision to Appendix S (list of Stipulated Remedy locations) to break the CBGs down into individual census blocks, which will not include the census blocks from the 3rd ranked CBG that were included in the SEP.

Please also find attached Houston's response to Efren's recent submittals of Paragraph 120 and Section VIII (SEP) of the CD. The comment on the Paragraph 120 document should explain our edit. Minor modifications were made to the SEP language from the CD to address certain impossibilities.

Thanks,

Phillip M. Goodwin, P.G.
Assistant City Attorney
City of Houston Legal Department
VOICE: 832-393-6285
FAX: 832-393-6259
phillip.goodwin@houstontx.gov

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Message

From: King, Carol [King.Carol@epa.gov]
Sent: 3/13/2017 6:13:18 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]; Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]
Subject: RE: Houston - revised SEP and Stipulated Remedy Language

Ex. 5 Attorney Client (AC)

From: King, Carol
Sent: Monday, March 13, 2017 2:12 PM
To: Ordonez, Efren <ordonez.efren@epa.gov>; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Subject: RE: Houston - revised SEP and Stipulated Remedy Language

Ex. 5 Attorney Client (AC)

From: Ordonez, Efren
Sent: Monday, March 13, 2017 2:05 PM
To: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; King, Carol <King.Carol@epa.gov>
Subject: FW: Houston - revised SEP and Stipulated Remedy Language

Ex. 5 Attorney Client (AC)

From: Goodwin, Phillip - LGL [mailto:Phillip.Goodwin@houstontx.gov]
Sent: Monday, March 13, 2017 12:58 PM
To: Ordonez, Efren <Ordonez.Efren@epa.gov>; Debra Baker <dbaker@bakerwotring.com>; Bingham, Tiffany - LGL <Tiffany.Bingham@houstontx.gov>
Cc: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Goodwin, Phillip - LGL <Phillip.Goodwin@houstontx.gov>
Subject: RE: Houston - revised SEP and Stipulated Remedy Language

Efren – It's Spring Break and Carol Haddock is out this week. I propose a call on Thursday, March 23 any time between 11-2 (Central). Please let me know if that works for your team. I intend to have the revised Exhibit S to you before that time.

Thanks,

Phillip M. Goodwin, P.G.
Assistant City Attorney
City of Houston Legal Department
VOICE: 832-393-6285
FAX: 832-393-6259
phillip.goodwin@houstontx.gov

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From: Ordonez, Efren [mailto:Ordonez.Efren@epa.gov]
Sent: Monday, March 13, 2017 12:50 PM
To: Goodwin, Phillip - LGL; Debra Baker; Bingham, Tiffany - LGL
Cc: Douglas, Nathaniel (ENRD); King, Carol; Zimny, James; Makepeace, Caroline; Peters, Carol
Subject: Houston - revised SEP and Stipulated Remedy Language

We have had a chance to review the language that you provided regarding the SEP and Stipulated Remedy. Attached please find our edits and comments. Are you available to have a small group discussion regarding this language tomorrow, Tuesday, any time between 1:30 pm -3:30 pm CST or this Wednesday from 10:00-11:00 am CST? The participants for the U.S. will be Caroline Makepeace, Carol Peters, and me. Once you let me know the time that you are available, I will send a scheduler.

Also, please let us know when you will provide the appendix that lists the census blocks for the stipulated remedy.
Efren

From: Goodwin, Phillip - LGL [mailto:Phillip.Goodwin@houstontx.gov]
Sent: Monday, March 06, 2017 4:18 PM
To: Nat Douglas <nathaniel.douglas@usdoj.gov>; Ordonez, Efren <Ordonez.Efren@epa.gov>; King, Carol <King.Carol@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Goodwin, Phillip - LGL <Phillip.Goodwin@houstontx.gov>; Debra Baker <dbaker@bakerwotring.com>; Bingham, Tiffany - LGL <Tiffany.Bingham@houstontx.gov>
Subject: SEP Exhibit 2 CBG Selection and SEP Implementation 030617

All –

Please find attached SEP Exhibit 2. Caroline, please look at the tables and let me know if the CBG column needs to be broken down to list individual census blocks in any of the tables. We're currently working on a revision to Appendix S (list of Stipulated Remedy locations) to break the CBGs down into individual census blocks, which will not include the census blocks from the 3rd ranked CBG that were included in the SEP.

Please also find attached Houston's response to Efren's recent submittals of Paragraph 120 and Section VIII (SEP) of the CD. The comment on the Paragraph 120 document should explain our edit. Minor modifications were made to the SEP language from the CD to address certain impossibilities.

Thanks,

Phillip M. Goodwin, P.G.
Assistant City Attorney
City of Houston Legal Department
VOICE: 832-393-6285
FAX: 832-393-6259
phillip.goodwin@houstontx.gov

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Message

From: Goodwin, Phillip - LGL [Phillip.Goodwin@houstontx.gov]
Sent: 2/7/2017 10:18:37 PM
To: King, Carol [King.Carol@epa.gov]
CC: Debra Baker [DBaker@BakerWotring.com]; Ceil Price [CPrice@BakerWotring.com]; Zimny, James [zimny.james@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]; Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Amy Davis (Amy.Davis@texasattorneygeneral.gov) [Amy.Davis@texasattorneygeneral.gov]; Emily Petrick (Emily.Petrick@texasattorneygeneral.gov) [Emily.Petrick@texasattorneygeneral.gov]; Goodwin, Phillip - LGL [Phillip.Goodwin@houstontx.gov]
Subject: RE: SEP Exhibit 3 SWQMP 011117
Attachments: removed.txt

Carol --

Thanks for your note. I'm working with our project staff to finalize the SEP-related materials, which has involved a walk-through of the entire project area, reduction of the project area to accommodate the hard $1.5M SEP cost allowance, meetings with our laboratory personnel regarding sample collection and processing, etc. I will be out of the office for the next two days and will continue finalizing the SEP documents upon my return. As a placeholder regarding the SEP text of the CD itself, we will need to revise to note that the SEP area is no longer a full Census Block Group. I'll send updated SEP CD text along with the Appendix Q and its Exhibits in one package, hopefully by COB Friday or early next week.

Thanks,

Phillip M. Goodwin, P.G.
Assistant City Attorney
City of Houston Legal Department
VOICE: 832-393-6285
FAX: 832-393-6259
phillip.goodwin@houstontx.gov

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From: King, Carol [mailto:King.Carol@epa.gov]
Sent: Friday, February 03, 2017 10:48 AM
To: Goodwin, Phillip - LGL
Cc: Debra Baker; Ceil Price; Zimny, James; Peters, Carol; Ordonez, Efren; Douglas, Nathaniel (ENRD); Amy Davis (Amy.Davis@texasattorneygeneral.gov); Emily Petrick (Emily.Petrick@texasattorneygeneral.gov)
Subject: RE: SEP Exhibit 3 SWQMP 011117

Hi Phillip,

As a follow-up to our recent call, draft SEP Appendix Exhibit 3 is okay, subject to the City providing and EPA reviewing the QA/QC provision, which the City still needs to provide. The City also needs to send a description of the area for the private lateral replacement and water quality drainage area.

Thanks,
Carol

Carol DeMarco King, Attorney-Advisor
United States Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office of Civil Enforcement/Water Enforcement Division
1200 Pennsylvania Ave., NW (Mail Code 2243A)
Washington, DC 20460
Phone: (202) 564-2412
Fax: (202) 564-0024
Email: king.carol@epa.gov

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From: Goodwin, Phillip - LGL [mailto:Phillip.Goodwin@houstontx.gov]
Sent: Wednesday, January 11, 2017 3:47 PM
To: Ordonez, Efren <Ordonez.Efren@epa.gov>; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; King, Carol <King.Carol@epa.gov>; Amy Davis (Amy.Davis@texasattorneygeneral.gov) <Amy.Davis@texasattorneygeneral.gov>; Emily Petrick (Emily.Petrick@texasattorneygeneral.gov) <Emily.Petrick@texasattorneygeneral.gov>
Cc: Debra Baker <DBaker@BakerWotring.com>; Ceil Price <CPrice@BakerWotring.com>; Goodwin, Phillip - LGL <Phillip.Goodwin@houstontx.gov>
Subject: RE: SEP Exhibit 3 SWQMP 011117

Apologies – I hit send too soon. While I believe this Exhibit 3 to be final, Carol Haddock is currently unavailable to confirm the final version of this Exhibit so I'm submitting with the disclaimer that Carol may have additional recommendations.

Thanks,

Phillip M. Goodwin, P.G.
Assistant City Attorney
City of Houston Legal Department
VOICE: 832-393-6285
FAX: 832-393-6259
phillip.goodwin@houstontx.gov

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From: Goodwin, Phillip - LGL
Sent: Wednesday, January 11, 2017 2:46 PM
To: Efren Ordonez (Ordonez.Efren@epamail.epa.gov); Douglas, Nathaniel (ENRD); King, Carol; Amy Davis (Amy.Davis@texasattorneygeneral.gov); Emily Petrick (Emily.Petrick@texasattorneygeneral.gov)
Cc: Goodwin, Phillip - LGL; Debra Baker; Ceil Price
Subject: SEP Exhibit 3 SWQMP 011117

Phillip M. Goodwin, P.G.
Assistant City Attorney
City of Houston Legal Department
VOICE: 832-393-6285
FAX: 832-393-6259
phillip.goodwin@houstontx.gov

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Message

From: Peters, Carol [Peters.Carol@epa.gov]
Sent: 2/21/2017 3:28:45 PM
To: King, Carol [King.Carol@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Zimny, James [zimny.james@epa.gov]; Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: RE: SEP Exhibit 3 SWQMP 020717

Ex. 5 Attorney Client (AC)

Carol Peters-Wagnon
6EN-WM
Ex. 6 Personal Privacy (PP)
214-665-3145

This email may contain material that is confidential, privileged and/or attorney work product and is for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

From: King, Carol
Sent: Tuesday, February 21, 2017 9:14 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Ordonez, Efren <Ordonez.Efren@epa.gov>
Subject: RE: SEP Exhibit 3 SWQMP 020717

Ex. 5 Attorney Client (AC)

From: King, Carol
Sent: Tuesday, February 21, 2017 9:30 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Cc: 'Douglas, Nathaniel (ENRD)' <Nathaniel.Douglas@usdoj.gov>; Ordonez, Efren <ordonez.efren@epa.gov>
Subject: FW: SEP Exhibit 3 SWQMP 020717
Importance: High

From: Goodwin, Phillip - LGL [mailto:Phillip.Goodwin@houstontx.gov]
Sent: Monday, February 20, 2017 5:30 PM
To: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; King, Carol <King.Carol@epa.gov>; Ordonez, Efren <Ordonez.Efren@epa.gov>
Cc: Goodwin, Phillip - LGL <Phillip.Goodwin@houstontx.gov>; Debra Baker <DBaker@BakerWotring.com>; Ceil Price <CPrice@BakerWotring.com>; Bingham, Tiffany - LGL <Tiffany.Bingham@houstontx.gov>
Subject: SEP Exhibit 3 SWQMP 020717

Attached is Houston's draft Exhibit 3 to Appendix Q (SEP).

Phillip M. Goodwin, P.G.
Assistant City Attorney
City of Houston Legal Department
VOICE: 832-393-6285
FAX: 832-393-6259
phillip.goodwin@houstontx.gov

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Message

From: King, Carol [King.Carol@epa.gov]
Sent: 1/23/2017 6:05:19 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]; Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]
Subject: FW: SEP language discussed on our call today
Attachments: COH revisions to SEP.DOCX

From: Debra Baker [mailto:DBaker@BakerWotring.com]
Sent: Wednesday, January 18, 2017 5:10 PM
To: King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Cc: Goodwin, Phillip - LGL <Phillip.Goodwin@houstontx.gov>; Carol Haddock (Carol.Haddock@houstontx.gov) <Carol.Haddock@houstontx.gov>; Iken, Jason - PWE <Jason.Iken@houstontx.gov>
Subject: SEP language discussed on our call today

As we discussed on our call today, attached please find language highlighted in yellow on the January 4 SEP draft clarifying the SEP funds issue. Let us know if you have questions. Thanks, Debra.

Debra Tsuchiyama Baker
Managing Partner
Baker · Wotring LLP
700 JPMorgan Chase Tower
600 Travis Street
Houston, TX 77002
713.980.1717 Direct
713.594.2212 Cell
713.980.1700 Main
713.980.1701 Fax
dbaker@bakerwotring.com
www.bakerwotring.com

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Message

From: Ordonez, Efren [Ordonez.Efren@epa.gov]
Sent: 3/10/2017 9:00:20 PM
To: Nat Douglas [nathaniel.douglas@usdoj.gov]; King, Carol [King.Carol@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Zimny, James [zimny.james@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]
Subject: Houston SEP/Stip language
Attachments: US revised sep cd lan 3-10-17.docx; revised Exh 2 3-10-17.docx; US revised stip para 120 stip 3-10-17.docx

Ex. 5 AC/AWP/DP

Message

From: Debra Baker [DBaker@BakerWotring.com]
Sent: 5/7/2019 10:02:29 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
CC: Ronald.Lewis@houstontx.gov; Goodwin, Phillip - LGL [Phillip.Goodwin@houstontx.gov]; Carol.Haddock@houstontx.gov; Win.Colbert@houstontx.gov; Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Rog, Morgan [Rog.Morgan@epa.gov]; King, Carol [King.Carol@epa.gov]; Zimny, James [zimny.james@epa.gov]; Vaughn, Alan [Vaughn.Alan@epa.gov]; Peters, Carol [Peters.Carol@epa.gov]
Subject: Re: Houston CD

Okay, thanks.

Sent from my iPhone

On May 7, 2019, at 4:50 PM, Ordonez, Efren <Ordonez.Efren@epa.gov> wrote:

> Sorry, I sent you the wrong files. Here are the correct files, one with markups and one without.
> Efren
>
> **From:** Debra Baker <DBaker@BakerWotring.com>
> **Sent:** Tuesday, May 07, 2019 4:33 PM
> **To:** Ordonez, Efren <Ordonez.Efren@epa.gov>; Ronald.Lewis@houstontx.gov; Goodwin, Phillip - LGL <Phillip.Goodwin@houstontx.gov>; Carol.Haddock@houstontx.gov; Win.Colbert@houstontx.gov
> **Cc:** Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
> **Subject:** RE: Houston CD
>
> Efren, I am a little confused. What you sent back as a redline for our review still contains the stipulated remedies and SEP language that you say you are removing. Then you sent a clean copy that has things removed, but there is no redline of the changes that you made so we cannot see it in redline form. So, we do not have redline that shows the changes you made. Can you send us that so we can see the revisions you made? Thanks.
>
> **From:** Ordonez, Efren [mailto:Ordonez.Efren@epa.gov]
> **Sent:** Tuesday, May 07, 2019 2:31 PM
> **To:** Ronald.Lewis@houstontx.gov; Debra Baker <DBaker@BakerWotring.com>; Goodwin, Phillip - LGL <Phillip.Goodwin@houstontx.gov>; Carol.Haddock@houstontx.gov; Win.Colbert@houstontx.gov
> **Cc:** Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
> **Subject:** Houston CD
>
> Nat asked that I send you the latest version of the CD. Please note that we made some minor revisions to the CD Draft that was sent to the U.S. by Phillip Goodwin and dated March 29, 2019, such as changes to paragraph numbering and elimination of typos, in addition to deleting language regarding the SEP and Stipulated Remedy. I am attaching a CD document with strikeouts/revisions and a "clean"

version. In response to your questions regarding SSO stipulated penalties, please review Paragraphs 83 and 84, which specify the stipulated penalties that shall be due to both Plaintiffs. Please let us know if you have any questions.

Efren Ordonez

From: Lewis, Ronald - LGL <Ronald.Lewis@houstontx.gov>
Sent: Tuesday, May 7, 2019 10:02 AM
To: Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>
Cc: Debra Baker <DBaker@BakerWotring.com>; Goodwin, Phillip - HPW <Phillip.Goodwin@houstontx.gov>; Haddock, Carol - HPW <Carol.Haddock@houstontx.gov>; Colbert, Win - LGL <Win.Colbert@houstontx.gov>
Subject: Stipulated Penalties
Importance: High

Nate:

I understand you have asked whether the City declines certain changes and have asked to be advised by today or tomorrow. At the same time, I am also told you are still re-writing the document as it relates to matters such as stipulated penalties and have not sent us the re-write. Is that correct?

If it is correct, what are we asked to consider; or stated differently, what do you think we have not agreed to if you have not shared a proposed final document for us to review?

I thought the only open issue was the dollar amount of stipulated penalties for future violations. I want the Mayor to see what your people are seeing. Is that a problem?

Can you send me your proposed language or a redline (of the relevant pages) with respect to this issue and confirm that the penalty amounts below are the amounts to which we are asked to consent?

If SSO occurs	Penalty per SSO per Day to the United States
Within four years from the Effective Date	$250
More than four years from the Effective Date	$500
More than seven years from the Effective Date	$1,250
More than 10 years from the Effective Date	$1,500

Penalty for SSOs that do not reach into or adjacent to waters

If SSO occurs	Penalty per SSO per day to United States
Within five years from the Effective Date	$150
More than five years from the Effective Date	$500
More than nine years from the Effective Date	$750

Armed with the relevant document changes, we can brief the Mayor and revert to you.

Thanks.

Ronald C. Lewis
City Attorney
City of Houston Legal Department
900 Bagby, 4th Floor
Houston, Texas 77002
Ronald.Lewis@HoustonTx.gov
832.393.6202 (O)
281.636.2997 (M)

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<ENV_ENFORCEMENT-#2808427-v1-Houston_CD_Markup_of_3-29_19_version_from_City.docx>

<ENV_ENFORCEMENT-#2803402-v1-Houston_CD_Updated_Draft_4-11-2019.docx>

Message

From: Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]
Sent: 5/7/2019 8:46:32 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: FW: Houston CD

Efren, thanks. Nat

From: Lewis, Ronald - LGL <Ronald.Lewis@houstontx.gov>
Sent: Tuesday, May 7, 2019 3:49 PM
To: Ordonez, Efren <Ordonez.Efren@epa.gov>; Debra Baker <DBaker@BakerWotring.com>; Goodwin, Phillip - HPW <Phillip.Goodwin@houstontx.gov>; Haddock, Carol - HPW <Carol.Haddock@houstontx.gov>; Colbert, Win - LGL <Win.Colbert@houstontx.gov>
Cc: Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>; Rog, Morgan <Rog.Morgan@epa.gov>; King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Subject: RE: Houston CD

Acknowledged.

Ronald C. Lewis
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From: Ordonez, Efren <Ordonez.Efren@epa.gov>
Sent: Tuesday, May 07, 2019 2:31 PM
To: Lewis, Ronald - LGL <Ronald.Lewis@houstontx.gov>; Debra Baker <DBaker@BakerWotring.com>; Goodwin, Phillip - HPW <Phillip.Goodwin@houstontx.gov>; Haddock, Carol - HPW <Carol.Haddock@houstontx.gov>; Colbert, Win - LGL <Win.Colbert@houstontx.gov>
Cc: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>; Vaughn, Alan <Vaughn.Alan@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Subject: Houston CD

[Message Came from Outside the City of Houston Mail System]
Nat asked that I send you the latest version of the CD. Please note that we made some minor revisions to the CD Draft that was sent to the U.S. by Phillip Goodwin and dated March 29, 2019, such as changes to paragraph numbering and elimination of typos, in addition to deleting language regarding the SEP and Stipulated Remedy. I am attaching a CD document with strikeouts/revisions and a "clean" version. In response to your questions regarding SSO stipulated penalties, please review Paragraphs 83 and 84, which specify the stipulated penalties that shall be due to both Plaintiffs. Please let us know if you have any questions.