
EXHIBIT O3

CONSENT DECREE

RB

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
and
THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiffs,

v.

DELAWARE COUNTY REGIONAL
WATER QUALITY CONTROL
AUTHORITY (DELCORA),

Defendant.

15

Civ. No. _____

JOINT COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the Commonwealth of Pennsylvania, Department of Environmental Protection ("PADEP"), file this Complaint, and allege as follows:

NATURE OF ACTION

1. This is a civil action for injunctive relief and civil penalties brought against the Delaware County Regional Water Quality Control Authority ("DELCORA" or "Defendant") pursuant to Sections 309(b) and (d) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1319(b) and (d), for permanent injunctive relief and assessment of civil penalties regarding the operation of a sewage treatment plant and collection system, including supplemental state claims brought pursuant to the Pennsylvania Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*,

A TRUE COPY CERTIFIED FROM THE RECORD
DATED: AUG 17 2015
ATTEST: [Signature]
DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

35 P.S. §§ 691.1-691.1001 (“Clean Streams Law”); Section 1917-A of the Administrative Code of 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”), and the rules and regulations promulgated thereunder (“Supplemental State Claims”). The United States alleges that Defendant discharged, and continues to discharge, pollutants, including sewage, into waters of the United States in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), and the conditions and limitations of National Pollutant Discharge Elimination System (“NPDES”) permits issued to DELCORA by PADEP, pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), and Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

2. The Commonwealth of Pennsylvania, through PADEP, is a party to this action in accordance with Section 309(e) of the Clean Water Act, 33 U.S.C. 1319(e). PADEP alleges that DELCORA discharged and/or continues to discharge pollutants, including sewage, into waters of the Commonwealth in violation of Sections 201, 202, and 401 of the Clean Streams Law, 35 P.S. §§ 691.201, 691.202, and 691.401, the terms and conditions of DELCORA’s NPDES permits, and the rules and regulations promulgated thereunder.

3. PADEP is the agency within the Commonwealth that is charged with the duty and the authority to administer and enforce, *inter alia*, the Clean Streams Law, Section 1917-A of the Administrative Code, and the rules and regulations promulgated thereunder, and which has been delegated authority to administer the NPDES permit program under Section 402 of the Clean Water Act, 33 U.S.C. § 1342. PADEP is a “state water pollution control agency” and “person” as defined in Section 502(1) and (5) of the Act, 33 U.S.C. § 1362(1) and (5). PADEP has authority to join in this Complaint pursuant to Sections 601 and 605 of the Clean Streams Law, 35 P.S. §§ 691.601 and 691.605.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d), and 28 U.S.C. §§ 1331, 1345, and 1355.

5. This Court has supplemental jurisdiction over the Supplemental State Claims alleged herein pursuant to 28 U.S.C. § 1367(a) because the Commonwealth claims are so related to the federal claims as to form part of the same case or controversy.

6. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b) and 1395(a), and Section 309(b) of the Act, 33 U.S.C. § 1319(b), because it is the judicial district where Defendant is located, where a substantial part of the events or omissions giving rise to the claims occurred, and where the alleged violations occurred.

NOTICE AND AUTHORITY

7. Authority to bring this action is vested in the Attorney General of the United States under Section 506 of the Act, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519. As a signatory to this Complaint, PADEP has notice of the commencement of this action, as required by Section 309(b) of the Act, 33 U.S.C. § 1319(b).

DEFENDANT

8. Defendant is a municipal authority created under the Pennsylvania Municipal Authorities Act, 53 Pa. C.S. §§ 5601-23.

9. Defendant is located in Delaware County, Pennsylvania.

10. Defendant has the power to sue and be sued. 53 Pa. C.S. § 5607(d)(2).

11. Defendant is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and Section 1 of the Clean Streams Law, 35 P.S. § 691.1, and a “municipality”

within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4) and Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

12. Defendant owns and operates a “treatment works” as that term is defined in Section 212(2) of the Act, 33 U.S.C. § 1292, and a “publicly owned treatment works” (“POTW”) as that term is defined in EPA regulations implementing the Act, 40 C.F.R. § 122.2 (cross-referencing the definition at 40 C.F.R. § 403.3(q)).

FEDERAL STATUTORY BACKGROUND

13. The purpose of the Act is to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The Act establishes a national goal to eliminate the discharge of pollutants into navigable waters. 33 U.S.C. § 1251(a)(1).

14. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except, *inter alia*, as authorized by an NPDES permit issued by EPA or an authorized State pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

15. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

16. Section 502(6) of the Act, 33 U.S.C. § 1362(6), includes “sewage” in the definition of the term “pollutant.”

17. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines “navigable waters” to be the “waters of the United States, including the territorial seas.”

18. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines “point source” as “any discernable, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

19. Section 402(q) of the Act, 33 U.S.C. § 1342(q), provides that each permit, order, or decree issued after December 21, 2000, for discharges from a municipal combined sewer system shall conform to EPA's Combined Sewer Overflow Control Policy ("CSO Policy"), 59 Fed. Reg. 18688 (April 19, 1994).

20. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue NPDES permits to authorize the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such permits.

21. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that a state may establish its own permit program, and after receiving EPA's authorization of that program, may issue NPDES permits within its jurisdiction.

22. On or about July 1, 1978, the Administrator of EPA authorized the Commonwealth to issue NPDES permits in Pennsylvania under the Clean Water Act, and the Commonwealth, through PADEP, does so in accordance with its Clean Streams Law, 35 P.S. § 691.1 *et seq.* The Commonwealth's authority to issue such permits has been in effect at all times relevant to this Complaint.

23. EPA retains concurrent enforcement authority pursuant to Section 402(i) of the Act, 33 U.S.C. § 1342(i).

24. 40 C.F.R. §§ 122-125 codify the regulatory requirements for the NPDES program.

25. 40 C.F.R. § 122.41 sets forth specific conditions applicable to all NPDES permits.

26. NPDES permits require the permittee to properly operate and maintain all facilities and systems of treatment and control. 40 C.F.R. § 122.41(e).

27. Combined sewer systems ("CSS") are wastewater collection systems owned by a

State or municipality designed to carry sanitary sewage (domestic, commercial and industrial wastewaters) and storm water (surface drainage from rainfall or snowmelt) through a single pipe to a POTW. CSO Policy, 59 Fed. Reg. at 18689 (April 19, 1994). In periods of rainfall or snowmelt, total wastewater flows can exceed the capacity of the CSS and overflow directly to surface water bodies, such as lakes and creeks. These overflows are called combined sewer overflows (“CSOs”). CSO Policy, 59 Fed. Reg. at 8691-94 (April 19, 1994).

28. The CSO Policy defines a CSO as the discharge from a combined sewer system at a point prior to the sewage treatment plant that consists of mixtures of domestic sewage, industrial and commercial wastewaters, and storm water runoff. 59 Fed. Reg. 18691-94 (April 19, 1994).

29. The CSO Policy requires the submission of a “Long Term Control Plan” (“LTCP”) to describe how the POTW will minimize or prevent CSOs and achieve compliance with the Act. *Id.*

30. Section II.C.4 of the CSO Policy requires, among other things, that the LTCP evaluate controls that would be necessary to achieve a range of overflow events per year, including zero overflow events per year or up to 100% capture, by making a reasonable assessment of cost and performance, sufficient to meet Act requirements. *Id.*

31. Section II.C.4 of the CSO Policy also requires, among other things, that the LTCP consider expansion of POTW secondary and primary capacity in the CSO abatement alternative analysis. *Id.*

32. Section II.C.5 of the CSO Policy requires that Defendant’s LTCP include cost/performance curves to demonstrate the relationships among the range of alternatives required under Section II.C.4 to determine where the increment of pollution reduction achieved

diminishes compared to the increased cost (a.k.a. “knee of the curve analysis”). *Id.*

33. The CSO Policy requires permittees with CSOs to implement the Nine Minimum Controls (“NMCs”), which are technology-based actions designed to reduce CSOs and their effects on receiving water quality. *Id.*

34. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the Administrator of EPA to commence a civil action to obtain appropriate relief, including a permanent or temporary injunction, when any person discharges without a permit in violation of Section 301 of the Act, 33 U.S.C. § 1311, or violates any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

35. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), the Court may impose civil penalties up to \$25,000 per day for each violation occurring prior to January 31, 1997. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134, enacted April 26, 1996; 110 Stat. 1321), EPA may seek civil penalties of up to \$32,500 per day per violation on or after March 15, 2004, and \$37,500 per day per violation occurring on or after January 12, 2009 (See 73 Fed. Reg. 75340, 75345) (Dec. 11, 2008) (78 Fed. Reg. 66647) (Nov. 6, 2013)), pursuant to 40 C.F.R. Part 19.

PENNSYLVANIA STATUTORY BACKGROUND

36. Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202, prohibit the discharge of sewage by any person or municipality into any waters of the Commonwealth except in compliance with a permit issued under Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

37. Section 92a.2 of the regulations adopted by the Pennsylvania Environmental Quality Board, 25 Pa. Code § 92a.2, defines “discharge” as “an addition of any pollutant to surface waters of this Commonwealth from a point source.”

38. Section 92a.2 of the regulations adopted by the Pennsylvania Environmental Quality Board, 25 Pa. Code § 92a.2, defines “pollutant” as “a contaminant or other alteration of the physical, chemical, biological or radiological integrity of surface water that causes or has the potential to cause pollution as defined in section 1 of the State Act (35 P. S. § 691.1).”

39. Section 1 of the Clean Streams Law, 35 P.S. § 691.1, states that “sewage” “shall be construed to include any substance that contains any of the waste products or excrementitious or other discharge from the bodies of human beings or animals.”

40. Section 1 of the Clean Streams Law, 35 P.S. § 691.1, states that “[w]aters of the Commonwealth” “shall be construed to include any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.”

41. Section 92a.9 of the regulations adopted by the Pennsylvania Environmental Quality Board, 25 Pa. Code § 92a.9, provides that an NPDES permit satisfies the permit requirement of Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

42. Section 601 of the Clean Streams Law, 35 P.S. § 691.601, provides in pertinent part:

- (a) Any activity or condition declared by this act to be a nuisance or which is otherwise in violation of this act shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

43. Section 611 of the Pennsylvania Clean Streams Law, 35 P.S. § 691.611, provides in pertinent part:

It shall be unlawful to fail to comply with any rule or regulation of the department or to fail to comply with any order or permit or licenses of the department, to violate any of the provisions of this act or rules and regulations adopted hereunder, or any order or permit or licenses of the department, to cause air or water pollution, or to hinder, obstruct, prevent or interfere with the department or its personnel in the performance of any duty hereunder or to violate the provisions of 18 Pa. C.S. Section 4903 (relating to false swearing) or 4904 (relating to unsworn falsifications to authorities). Any person or municipality engaging in such conduct shall be subject to the provisions of Sections 601, 602, and 605.

44. Section 605 of the Clean Streams Law, 35 P.S. § 691.605, provides in pertinent part:

In addition to proceeding under any other remedy available at law or equity for a violation of provision of this act, rule, regulations, order of the department, or condition of any permit issued pursuant to this act, the department, after hearing, may assess a civil penalty upon a person or municipality for such violation. Such a penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed ten thousand dollars (\$10,000) per day for each violation.

45. Section 1917-A of the Administrative Code, 71 P.S. § 510-17, provides, in pertinent part, that PADEP shall have the power and its duty shall be:

- (1) To protect the people of this Commonwealth from unsanitary conditions and other nuisances, including any condition which is declared to be a nuisance by any law administered by the department;
- (2) To cause examination to be made of nuisances, or questions affecting the security of life and health, in any locality, and, for that purpose, without fee or hinderance, to enter, examine and survey all grounds, vehicles, apartments, buildings, and places, within the Commonwealth, and all persons, authorized by the department to enter, examine and survey such grounds, vehicles, apartments, buildings and places, shall have the powers and authority conferred by law upon constables; [and]
- (3) To order such nuisances including those detrimental to the public health to be abated and removed.

GENERAL ALLEGATIONS

46. Defendant provides sewer service to portions of Delaware County, PA, and a small portion of Chester County, PA.

47. At all relevant times, Defendant has owned and operated the Western Regional Treatment Plant ("WRTP"), a "treatment works" as that term is defined in Section 212(2) of the Act, 33 U.S.C. § 1292, and 25 Pa. Code § 92a.2, and together with its associated collection system, a "publicly owned treatment works" ("POTW") as that term is defined in EPA regulations implementing the Act, 40 C.F.R. § 122.2 (cross-referencing the definition at 40 C.F.R. § 403.3(q)) and 25 Pa. Code § 92a.2.

48. The WRTP is located at 3201 W. Front Street, Chester, PA. It was built in 1974, originally designed to treat 44 million gallons per day ("MGD"), and has been conditionally rerated by PADEP to receive 50 MGD upon the construction of a 455-foot outfall into the Delaware River.

49. The WRTP is a conventional activated sludge facility with primary and secondary wastewater treatment and disinfection by chlorine. The maximum daily design flow of the WRTP is approximately 105 MGD. In 2012, the average flow was 29 MGD. The maximum daily flow in 2012 was 62 MGD, recorded on December 21, 2012.

50. At all relevant times, Defendant has owned and operated a collection system ("Collection System") that collects stormwater and wastewater from residential, commercial, and industrial sources, including but not limited to approximately 300,000 feet of combined sewers and 210,000 feet of separate sanitary sewers within the City of Chester.

51. Pursuant to contractual arrangements, DELCORA also treats wastewater at the WRTP that is collected and conveyed to the WRTP by means that DELCORA does not own.

52. DELCORA is authorized to discharge pollutants from the WRTP and Collection System in accordance with DELCORA's NPDES Permits into Ridley Creek, Chester Creek, and the Delaware River.

53. Ridley Creek, Chester Creek, and the Delaware River are each a "water of the United States" for purposes of Section 502(7) of the Act, 33 U.S.C. § 1362(7), a "water of the Commonwealth" within the meaning of Section 1 of the Clean Streams Law, 35 P.S. § 691.1, and are each located within the jurisdiction of the U.S. District Court for the Eastern District of Pennsylvania.

54. At all times relevant herein, Defendant has "discharged," and continues to discharge, "pollutants" from its treatment works within the meaning of Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12), and Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202, from "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), into the waters of the United States.

55. Sewage, commercial and industrial waste, and their constituents are "pollutants" within the meaning of Section 506(6) of the Act, 33 U.S.C. § 1362(6), and within the meaning of "pollution" under Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

56. The outfalls from which DELCORA discharges are "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

57. During certain rainfall events, the volume of wastewater entering the Combined Sewer System exceeds the hydraulic capacity of the sewers and/or the treatment facility. In those circumstances, the Collection System will discharge untreated combined sewage from certain designated outfalls, known as combined sewer outfalls.

58. When combined sewage discharges from a combined sewer outfall into a receiving water body, the event is known as a combined sewer overflow ("CSO").

59. The combined sewer outfalls from which DELCORA discharges are "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

60. Pursuant to the CSO Policy, 59 Fed. Reg. 18689 (April 19, 1994), CSOs are point sources subject to NPDES permit requirements, including both technology-based and water quality-based requirements of the Act.

61. Discharges from a sewage treatment plant are discharges from a point source that require an NPDES permit pursuant to Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342. Discharges from a CSO discharge point are discharges from a point source that require an NPDES permit pursuant to Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

62. At all relevant times, Defendant's NPDES Permits have authorized Defendant to discharge pollutants only from specified point sources (identified in the permits as one or more numbered "outfalls") to specified waters of the United States and/or the Commonwealth, subject to limitations and conditions set forth in the NPDES Permits.

63. The combined sewage that Defendant discharges from its combined sewer outfalls contains raw sewage, commercial and industrial waste from industrial users of the system, and storm water runoff.

64. Raw sewage and combined sewage contain viruses, bacteria and protozoa as well as other pathogens.

65. Infection with organisms contained in raw sewage can cause a number of adverse health effects ranging from minor illnesses such as sore throats and mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious

hepatitis, and severe gastroenteritis.

66. Children, the elderly, people with weakened immune systems, and pregnant women are at more risk for adverse consequences from such infections than the general population.

67. When raw sewage and combined sewage are discharged into waterways, bacteria consume organic matter in the sewage and consume oxygen dissolved in the water. When large amounts of sewage are discharged, dissolved oxygen levels can become severely depleted, resulting in the suffocation of oxygen-dependent aquatic life forms including fish, mollusks, and crustaceans.

68. Raw sewage and combined sewage contains high levels of nutrients such as nitrogen and phosphorous. When such nutrients enter water ways in large amounts, they can fuel algal blooms that block the penetration of light through the water and thereby threaten aquatic plants that rely on photosynthesis for energy. When algae decays, it can consume dissolved oxygen in the same manner as the decomposition of sewage.

69. PADEP issued Defendant NPDES Permit Number PA0027103, on or about March 30, 2007 ("2007 Permit"), with an expiration date of March 31, 2012. Without altering the expiration date, PADEP amended the 2007 Permit on March 9, 2009 ("March 2009 Amended Permit"), December 4, 2009 ("December 2009 Amended Permit"), and again on September 28, 2011 ("2011 Amended Permit"). Part C, Section 15, Subsection C of the March 2009 Amended Permit required Defendant to update its LTCP in accordance with the EPA "Guidance For Long-Term Control Plan (EPA 832-B-95-002)," dated September 1995 ("LTCP Guidance"), which implements the CSO Policy, and to submit the updated LTCP to EPA within 90 days of the March 9, 2009 issuance of the March 2009 Amended Permit.

70. Defendant did not submit the updated LTCP to EPA within 90 days of the March 9, 2009 issuance of the March 2009 Amended Permit.

71. On or about September 24, 2009, EPA issued an Administrative Order (“2009 Order”) to Defendant pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), alleging that Defendant failed to submit an updated LTCP as required by the March 2009 Amended Permit.

72. The 2009 Order required Defendant to submit an updated LTCP conforming to the LTCP Guidance by February 1, 2010.

73. Defendant did not submit an updated LTCP by February 1, 2010 as required by the 2009 Order.

74. On or about August 2, 2010, EPA issued a Notice of Noncompliance and Request to Show Cause to Defendant (“Show Cause Letter”). The Show Cause Letter invited Defendant to show cause why EPA should not commence an administrative civil enforcement action to compel permit compliance and assess a penalty.

75. On or about February 1, 2011, Defendant submitted a revised LTCP (“2011 LTCP”).

76. By letter dated September 14, 2011, EPA notified Defendant that the 2011 LTCP did not meet the requirements of the 2009 Order or the CSO Control Policy.

77. Paragraph C.V.C.1. of the 2011 Amended Permit states: “DELCORA submitted the updated Long Term Control Plan to EPA on February 1, 2011. DELCORA shall continue implementation of the April 1999 LTCP and July 2008 addendum to the LTCP until the updated plan is approved. Implementation of the updated plan shall result in compliance with water quality standards. The updated LTCP must be in accordance with the 1994 National CSO Policy.”

78. On or about April 18, 2012, Defendant submitted a revised LTCP (“2012 LTCP”).

79. By letter dated April 18, 2013, EPA informed Defendant that the 2012 LTCP did not conform to the requirements of the CSO Policy.

80. Following Defendant’s February 2012 application for renewal of its NPDES Permit, PADEP issued Defendant NPDES Permit Number PA0027103 effective May 1, 2013 and amended on or about December 17, 2013 (effective January 1, 2014), expiring April 30, 2018 (“2013 Permit”).

81. Paragraph C.V.C.1 of the 2013 Permit states: “DELCORA submitted the updated Long Term Control Plan to EPA on February 1, 2011. DELCORA shall continue implementation of the April 1999 LTCP and July 2008 addendum to the LTCP until the updated plan is approved. Implementation of the updated plan shall result in compliance with water quality standards. The updated LTCP must be in accordance with the 1994 National CSO Policy.”

82. Each of DELCORA’s NPDES Permits requires DELCORA to meet certain effluent limitations for discharges from Outfall 001 at the WRTP, and prohibits discharges from the CSOs during dry weather.

FEDERAL CLAIMS FOR RELIEF

FIRST FEDERAL CLAIM

(Failure to Develop and Implement an Adequate Long Term Control Plan)

83. The preceding paragraphs are re-alleged and incorporated herein by reference.

84. From at least July 1, 2009, and continuing to the present, Defendant has failed to submit a Long Term Control Plan and schedule for implementation consistent with the EPA’s CSO Policy as required by the CSO Policy, the March 2009 Amended Permit and the 2013 Permit.

85. Defendant's failure to develop and implement an adequate Long Term Control Plan constitutes a violation of its NPDES Permits and Section 301 of the Act, 33 U.S.C. § 1311.

86. Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d), provide that any person who violates any condition or limitation which implements Section 301 of the Act, including permit conditions and limitations, shall be subject to injunctive relief and a civil penalty. Each day that DELCORA fails to develop and implement an adequate Long Term Control Plan in violation of its NPDES Permits constitutes a separate violation of its NPDES Permits and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

87. Unless enjoined by an order of the Court, Defendant will continue to violate its NPDES Permits, and therefore Section 301(a) of the Act, 33 U.S.C. § 1311(a), by failing to develop and implement a Long Term Control Plan consistent with the requirements of its NPDES Permits and Section 402(q) of the Act.

88. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, Defendant is liable for civil penalties of up to \$37,500 per day per violation occurring on or after January 12, 2009, pursuant to 40 C.F.R. Part 19.

**SECOND FEDERAL CLAIM
(Effluent Limitation Violations)**

89. The preceding paragraphs are re-alleged and incorporated herein by reference.

90. Defendant's NPDES Permits authorize it to discharge pollutants from a single Treatment Plant point identified as Outfall 001. Discharges from Outfall 001 are subject to effluent limitations that prohibit discharges of specified pollutants in excess of numeric monthly and weekly average mass unit limits, as well as numeric monthly and weekly average concentration limits.

91. On numerous occasions since 2009, Defendant discharged wastewater containing pollutants from Outfall 001 in violation of the effluent limitations contained in its NPDES Permits.

92. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as authorized by an NPDES permit issued by EPA or an authorized State pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

93. The receiving waters for Defendant's discharges in excess of effluent limitations contained in its applicable NPDES Permits constitute waters of the United States that are "navigable waters" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

94. Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d), provide that any person who violates any condition or limitation which implements Section 301 of the Act, including permit conditions and limitations, shall be subject to injunctive relief and a civil penalty. Each day that DELCORA discharges wastewater containing pollutants from Outfall 001 in violation of the effluent limits contained in its NPDES Permits constitutes a separate violation of a permit condition or limitation and each discharge is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

95. Unless enjoined by an order of the Court, Defendant will continue to discharge pollutants in excess of its effluent limitations for Outfall 001 in violation of Section 301 of the Act, 33 U.S.C. § 1311.

96. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, Defendant is liable for civil penalties of up to \$37,500 per day per violation occurring on or after January 12, 2009, pursuant to 40 C.F.R. Part 19.

THIRD FEDERAL CLAIM
(Unpermitted CSO Discharges)

97. The preceding paragraphs are re-alleged and incorporated herein by reference.

98. Defendant's NPDES Permits authorize Defendant to discharge combined sewage from its combined sewer outfalls only when necessitated by stormwater entering the sewer system and exceeding the hydraulic capacity of the sewers and /or the treatment plant.

99. Defendant's NPDES Permits state that dry weather overflows are prohibited.

100. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit issued by the EPA or an authorized State pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

101. Since 2009, Defendant has repeatedly discharged combined sewage from combined sewer outfalls during dry weather.

102. Since 2009, Defendant has repeatedly discharged combined sewage from combined sewer outfalls during storm events where the hydraulic capacity of the sewers and /or the treatment plant has not been exceeded due to precipitation.

103. Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d), provide that any person who violates any condition or limitation which implements Section 301 of the Act, including permit conditions and limitations, shall be subject to injunctive relief and a civil penalty.

104. Unless enjoined by an order of the Court, Defendant will continue to discharge pollutants from its combined sewer outfalls in violation of its NPDES permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

105. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, Defendant is liable for civil penalties of up to \$37,500 per day per violation occurring on or after January 12, 2009, pursuant to 40 C.F.R. Part 19.

SUPPLEMENTAL STATE CLAIMS

FIRST SUPPLEMENTAL STATE CLAIM (Failure to Develop and Implement an Adequate Long Term Control Plan)

106. The preceding paragraphs are re-alleged and incorporated herein by reference.

107. Defendant's failure to develop and implement an approved LTCP constitutes a violation of its NPDES Permits and Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

108. Defendant will continue to violate its NPDES Permit, and will therefore continue to violate Section 202 of the Clean Streams Law, 35 P.S. § 691.202, in this manner, unless enjoined by the Court.

109. The violations described in the preceding paragraphs constitute unlawful conduct pursuant to Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and subject Defendant to a claim for civil penalties of up to \$10,000 per day for such violations under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

SECOND SUPPLEMENTAL STATE CLAIM (Effluent Limitation Violations)

110. The preceding paragraphs are re-alleged and incorporated herein by reference.

111. On numerous occasions since 2009, Defendant discharged wastewater containing pollutants from Outfall 001 in violation of the effluent limitations contained in its NPDES Permits.

112. The discharge of sewage into waters of the Commonwealth, as described herein, was not authorized by permit or regulation and constitutes a violation of Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202.

113. The discharge of sewage into waters of the Commonwealth, as described herein, resulted in pollution and thereby constitutes a violation of Section 401 of the Clean Streams Law, 35 P.S. § 691.401.

114. Unless enjoined by the Court, Defendant will continue to violate its NPDES Permit and Sections 201, 202 and 401 of the Clean Streams Law, 35 P.S. §§ 691.201, 691.202 and 691.401.

115. The violations described in the preceding paragraphs constitute unlawful conduct pursuant to Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and subject Defendant to a claim for civil penalties of up to \$10,000 per day for such violations under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

**THIRD SUPPLEMENTAL STATE CLAIM
(Unpermitted CSO Discharges)**

116. The preceding paragraphs are re-alleged and incorporated herein by reference.

117. Since 2009, Defendant has repeatedly discharged combined sewage from combined sewer outfalls during dry weather.

118. The discharge of sewage into waters of the Commonwealth, as described herein, was not authorized by permit or regulation and constitutes a violation of Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202.

119. The discharge of sewage into waters of the Commonwealth, as described herein, resulted in pollution and thereby constitutes a violation of Section 401 of the Clean Streams Law, 35 P.S. § 691.401.

120. Unless enjoined by the Court, Defendant will continue to violate its NPDES Permit and Sections 201, 202 and 401 of the Clean Streams Law, 35 P.S. §§ 691.201, 691.202 and 691.401.

121. The violations described in the preceding paragraphs constitute unlawful conduct pursuant to Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and subject Defendant to a claim for civil penalties of up to \$10,000 per day for such violations under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment on their behalf against Defendant as follows:

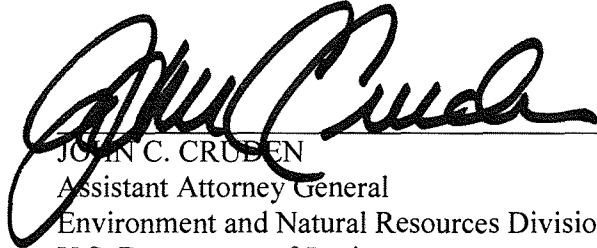
a) A permanent injunction directing Defendant to take all steps necessary to achieve permanent and consistent compliance with the prohibition on unpermitted discharges contained in Section 301(a) of the Act, 33 U.S.C. § 1311(a), and the Pennsylvania Clean Streams Law, 35 P.S. §§ 691.3, 691.601, 691.611;

b) A permanent injunction directing Defendant to take all steps necessary to achieve permanent and consistent compliance with the Act and the regulations promulgated thereunder, and all terms and conditions of its NPDES Permits;

c) A judgment assessing civil penalties against Defendant for up to \$37,500 per day for each violation of the Act occurring on or after January 12, 2009, and up to \$10,000 per day for each violation, pursuant to Section 605 of the Clean Streams Law, 35 P.S. § 691.605;

- d) Award the Plaintiffs their costs in this action; and
- e) Grant the Plaintiffs such other relief as the Court deems appropriate.

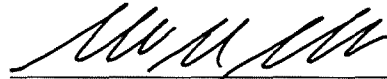
Respectfully Submitted,



JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

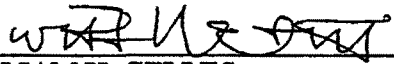
Dated: _____

July 21, 2015



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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
and
THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiffs,

v.

DELAWARE COUNTY REGIONAL
WATER QUALITY CONTROL
AUTHORITY (DELCORA),

Defendant.

Civ. No. 15-4652

FILED

NOV 10 2015

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

CONSENT DECREE

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WHEREAS, Plaintiffs, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and the Commonwealth of Pennsylvania Department of Environmental Protection (“PADEP”) filed a Complaint in this matter against Defendant Delaware County Regional Water Quality Control Authority, (“Defendant” or “DELCORA”) seeking injunctive relief and civil penalties, and alleging, *inter alia*, that DELCORA violated the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251-1387, Sections 201, 202 and 401 of the Pennsylvania Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.201, 691.202 and 695.401, and certain terms and conditions of the National Pollutant Discharge Elimination System (“NPDES”) permit last issued by PADEP as NPDES Permit No. PA0027103, effective on or about May 1, 2013 and amended on or about December 17, 2013 (effective January 1, 2014), issued to DELCORA pursuant to the CWA relating to the municipal wastewater treatment plant and collection system owned and operated by DELCORA (“Complaint”);

WHEREAS, DELCORA is a municipal authority organized under the Municipal Authorities Act, as amended, 53 Pa. Cons. Stat. Ann. §§ 5601-5623, that owns, operates, and maintains a publicly owned treatment works (“POTW”), which includes a wastewater treatment plant known as the Western Regional Treatment Plant (“WRTP”) and a collection system (“Collection System”) that collects stormwater and wastewater from residential, commercial, and industrial sources. Certain portions of the Collection System are a Combined Sewer System and other portions are a Sanitary Sewer System. Pursuant to contractual arrangements, DELCORA also treats wastewater at the WRTP that is collected and conveyed to the WRTP by means that DELCORA does not own. DELCORA is authorized to discharge pollutants from the WRTP and Collection System in accordance with DELCORA’s NPDES permit into Ridley Creek, Chester

Creek, and the Delaware River; all of which are located within the jurisdiction of the U.S. District Court for the Eastern District of Pennsylvania;

WHEREAS, the United States and PADEP allege that DELCORA has violated and continues to violate Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, and Sections 3, 201, 202 and 401 of the Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.3, 691.201, 691.202 and 691.401, by impermissibly discharging untreated sewage from the Collection System to Ridley Creek, Chester Creek, and the Delaware River;

WHEREAS, nothing in this Consent Decree will be construed as an admission by DELCORA of violations of any provisions of the CWA, or of DELCORA's current or past NPDES permits, or of the Clean Streams Law;

WHEREAS, the Parties recognize, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and will avoid prolonged and complicated 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 I (Jurisdiction and Venue) below, and with the consent of the Parties, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, 1355, and 1367. Venue is proper 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). For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court's

jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, and Sections 3, 201, 202, 401, 601, and 605 of the Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.3, 691.201, 691.202, 691.401, 691.601, and 691.605.

II. APPLICABILITY AND BINDING EFFECT

3. This Consent Decree will apply to and be binding upon the United States, on behalf of EPA, PADEP, and upon Defendant and its successors, assigns, and all other entities and persons provided for in Fed. R. Civ. P. 65(d).

4. Defendant shall notify the following of the existence of this Consent Decree and make a copy available to them: all officers, employees, and agents of DELCORA whose duties might reasonably include compliance with any provision of this Consent Decree, as well as any contractor retained to perform work required under this Consent Decree.

5. Effective from the Date of Lodging of this Consent Decree until its termination, in the event that DELCORA transfers any ownership or operation of its WRTP, the Collection System, or any portion of the WRTP or Collection System, and includes in such transfer, the transfer of any obligations under this Consent Decree, DELCORA will give written notice and a copy of this Consent Decree to any successors in interest at least 30 Days prior to such transfer. DELCORA will condition any transfer, in whole or in part, of ownership, operation, or other interest in the WRTP or the Collection System, upon the successful execution of the terms and conditions of this Consent Decree. Simultaneously with notice to any successor in interest, DELCORA will provide written notice of such transfer to the United States and PADEP as provided in Section XVI (Notices and Submissions). In the event of any such transfer of

ownership or other interest, DELCORA will not be released from the obligations or liabilities of this Consent Decree unless: (i) the transferee has the financial and technical ability to assume these obligations and liabilities; (ii) the United States and PADEP have agreed to release DELCORA from the obligations and liabilities; (iii) the United States, PADEP, and the transferee have jointly moved to substitute the transferee as Defendant to this Consent Decree; and (iv) the Court has approved the substitution.

6. In any action to enforce this Consent Decree, Defendant will not raise as a defense the failure of its officers, directors, agents, contractors, employees, successors, assigns or any other persons or entities provided for in Fed. R. Civ. P. 65(d) to take any actions necessary to comply with the provisions hereof. Nothing in this Paragraph prevents the Defendant from invoking Section XI of this Decree (Force Majeure), provided that the event meets the definition of a Force Majeure provided in Paragraph 66.

III. OBJECTIVES

7. The objectives of this Consent Decree are for the Defendant to take the steps necessary to achieve full compliance with the CWA, the regulations promulgated thereunder, including but not limited to 33 U.S.C. § 1342(q) and the regulations promulgated thereunder, and the Clean Streams Law and the regulations promulgated thereunder. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendant to come into and remain in full compliance with the terms and conditions of Defendant's NPDES Permit, the Clean Water Act, and the Clean Streams Law, including elimination of Sanitary Sewer Overflows, as these terms are defined in Section IV (Definitions).

IV. DEFINITIONS

8. Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the CWA, 33 U.S.C. § 1251-1387, and the regulations promulgated thereunder, or, if not defined in the Clean Water Act or its regulations, then as defined in the Pennsylvania Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.1-691.1001 and the regulations promulgated thereunder. The following definitions shall apply to the terms used in the Consent Decree:

a. “Building/Private Property Backup” shall mean a release of wastewater into a building or onto private property that is caused by blockage(s), flow condition(s) or Collection System malfunction(s). A wastewater backup or release that is caused solely by conditions in a Private Lateral is not a Building/Private Property Backup for purposes of this Consent Decree.

b. “Clean Water Act” or “CWA” shall mean the Federal Water Pollution Control Act found at 33 U.S.C. §§ 1251-1387, and the regulations promulgated thereunder.

c. “Collection System” shall mean the current and future municipal wastewater collection and transmission system owned or operated by DELCORA, including all pipes, interceptors, force mains, gravity sewer lines, lift stations, pumping stations, manholes and appurtenances thereto designed to collect and convey municipal sewage and wastewaters (domestic, commercial, and industrial). “Collection System” includes both the “Combined Sewer System” and the “Sanitary Sewer System.” The Collection System does not include the “Eastern Service Area” (as depicted on Figure 1-2 of the Long-Term Control Plan submitted by DELCORA in April 2012, and attached as Appendix A hereto), which consists of the Central Delaware County Authority, the Muckinipates Authority, the Darby Creek Joint Authority, and the Radnor-Haverford-Marple Authority, except that the Collection System does include the

Central Delaware Pump Station, the Muckinapates Pump Station, the Darby Creek Pump Station, the Eastern Force Main, the Eastern Bypass, and all associated pipes, interceptors, force mains, gravity sewer lines, lift stations, pumping stations, manholes and appurtenances thereto designed to collect and convey municipal sewage and wastewaters (domestic, commercial, and industrial).

d. “Combined Sewer Overflow Control Policy” or “CSO Control Policy” shall mean the policy issued by EPA regarding combined sewer overflows, entitled “Combined Sewer Overflow (CSO) Control Policy,” 59 Fed. Reg. 18688 (April 19, 1994) and as identified in Section 402(q) of the Clean Water Act, 33 U.S.C. § 1342(q).

e. “Combined Sewer Overflow” or “CSO” shall mean any discharge from DELCORA’s Combined Sewer System at a CSO Outfall designated in the currently applicable NPDES Permit.

f. “Combined Sewer System” shall mean the portion of DELCORA’s Collection System designed to convey municipal sewage and wastewaters (domestic, commercial, and industrial) and stormwater in the same system of pipes.

g. “Consent Decree” shall mean this Consent Decree, all Appendices hereto, and all plans, schedules, reports, memoranda, or other submittals approved by the Plaintiffs pursuant to the requirements of this Consent Decree or any Appendix hereto. In the event of any conflict between the Consent Decree and any Appendix, this Consent Decree shall control.

h. “CSO Control Measure” shall mean each long-term CSO control selected in DELCORA’s approved Long Term Control Plan, including but not limited to the construction, control measures, actions, and other activities set forth in DELCORA’s approved Long Term Control Plan.

i. “CSO Outfall” shall mean an outfall in the Combined Sewer System from which combined sewage and stormwater are discharged and so designated in the currently applicable NPDES Permit.

j. “Date of Lodging” shall mean the date that this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Eastern District of Pennsylvania.

k. “Day” shall mean a calendar day unless expressly stated to be a working day. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday, federal holiday, or legal holiday for DELCORA, DELCORA shall have until the next calendar day that is not one of the aforementioned days for submission of such report or other deliverable.

l. “DELCORA” shall mean Defendant Delaware County Regional Water Quality Control Authority, a municipal corporation located in Delaware County, Pennsylvania.

m. “Dry Weather Overflow” shall mean a discharge that occurs at a permitted CSO Outfall that is not caused by precipitation-related Inflow or Infiltration.

n. “Eastern Bypass” means the force main that connects the Central Delaware Pump Station to the Chester Force Main, which in turn is connected to DELCORA’s Western Regional Treatment Plant.

o. “Eastern Force Main” means the force main that connects the Central Delaware Pump Station, Muckinipates Pump Station, and Darby Creek Pump Station to the City of Philadelphia Water Department’s Southwest Water Pollution Control Plant.

p. “Effective Date” shall mean the date set forth in Section XVII (Effective Date) of this Consent Decree.

q. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

r. “EPS-1 Pump Station” means the pump station that receives the gravity flow from DELCORA’s Delaware and West End Interceptors, as well as the force main from Covanta’s Chester facility, and pumps the flow to DELCORA’s Western Regional Treatment Plant.

s. “Infiltration” shall have the meaning set forth at 40 C.F.R. § 35.2005(20).

t. “Inflow” shall have the meaning set forth at 40 C.F.R. § 35.2005(21).

u. “Long Term Control Plan” or “LTCP” shall mean the plan that DELCORA develops pursuant to Section V.A.

v. “MGD” shall mean million gallons per day.

w. “NPDES Permit” shall mean the currently effective NPDES Permit No. PA0027103, effective on or about May 1, 2013 and amended on or about December 17, 2013 (effective January 1, 2014), issued to DELCORA by PADEP. This definition includes any subsequent modification or reissuance of the Permit in accordance with 40 C.F.R Part 123.

x. “PADEP” shall mean the Pennsylvania Department of Environmental Protection and any successor departments or agencies of the Commonwealth of Pennsylvania.

y. “Paragraph” shall mean a provision of this Consent Decree identified by an Arabic number.

z. “Parties” shall mean the United States, PADEP, and DELCORA.

aa. “Placement in Operation” shall mean to operate consistently in such a way as to achieve the level of control intended by each CSO Control Measure, even though all

construction close-out activities, such as completion of a punchlist and resolution of contract disputes or close-outs, may not yet be completed.

bb. “Plaintiffs” shall mean the United States and PADEP.

cc. “Private Lateral” shall mean pipes and any other appurtenances not owned or operated by DELCORA that are used to convey wastewater from a building or buildings to the Collection System as defined herein.

dd. “Receiving Waters” shall mean Ridley Creek, Chester Creek, and the Delaware River.

ee. “Sanitary Sewer System” shall mean the current and future portion of the Collection System designed to convey municipal sewage and wastewaters (domestic, commercial, and industrial) in one system and stormwater in a separate system.

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

gg. “Section” shall mean a portion of this Consent Decree identified by an uppercase Roman Number.

hh. “Semi-Annual Progress Report” shall mean the reports due on a semi-annual basis under Section VII (Reporting).

ii. “Sensitive Areas” shall have the meaning set forth in Section II.C.3. of the CSO Control Policy, and shall be determined in accordance with Paragraph 11 hereof.

jj. “Semi-Annual Period” shall mean each six-month period commencing on either January 1, or July 1 of each calendar year.

kk. “Subparagraph” shall mean a provision of this Consent Decree identified by one or two lowercase letters followed immediately by a period. All Subparagraphs are incorporated into and a part of the Paragraph immediately preceding the Subparagraph.

ll. “Typical Year” shall mean the precipitation volume, frequency, duration and intensity determined pursuant to Paragraph 12.

mm. “Unauthorized Release” shall mean any overflow, spill, diversion, or release of wastewater within the Combined Sewer System at a location other than a CSO Outfall. This term shall include any release of wastewater from the Combined Sewer System to public or private property that does not reach waters of the Commonwealth or United States, including Building/Private Property Backups.

nn. “Unpermitted Discharge” shall mean a Dry Weather Overflow or any discharge to waters of the United States or the Commonwealth of Pennsylvania from the Collection System or the WRTP at a location other than an Outfall designated in the NPDES Permit, including Building/Private Property Backups.

oo. “Western Regional Treatment Plant” or “WRTP” shall mean the waste water treatment plant owned and operated by DELCORA located at 3201 W. Front Street, Chester, Pennsylvania.

V. COMPLIANCE MEASURES

A. LONG-TERM CONTROL PLAN

9. Updated Long Term Control Plan Development. By no later than three and one half years (42 months) after the Date of Lodging of this Consent Decree, DELCORA shall complete and submit a revised and updated Long Term Control Plan (“LTCP”) to Plaintiffs for

review and approval in accordance with the requirements of Section VI (Review and Approval of Submittals). The LTCP shall include, at a minimum, a detailed analysis and discussion of each item described in Paragraphs 10 through 22 hereof, and shall include proposed schedules, deadlines and timetables for implementing each component of the LTCP. The LTCP shall conform to the requirements of EPA's CSO Control Policy and EPA's "Guidance for Long-Term Control Plan," EPA 832-B-95-002, September 1995. DELCORA shall take into consideration EPA's "Greening CSO Plans: Planning and Modeling Green Infrastructure for Combined Sewer Overflow (CSO) Control," EPA 832-R-14-001, March 2014, in developing the LTCP. The selected CSO controls set forth in the LTCP shall be designed to meet the following overarching goals:

- a. Bringing all CSO discharge points into full compliance with the technology-based and water quality-based requirements of the CWA; and
- b. Minimizing the impacts of CSOs on water quality, aquatic biota, and human health.

10. Development of the updated Long Term Control Plan shall involve the following steps, each as set forth in further detail in this Section:

- a. Identification of Sensitive Areas as required by Paragraph II.C.3 of the CSO Control Policy, and identification of pollutants of concern ("PoCs"), to be determined consistent with EPA's "Guidance for Long-Term Control Plan," EPA 832-B-95-002, September 1995;
- b. Identification of an appropriate Typical Year rainfall record;

- c. Coordination with EPA and PADEP to determine the approach to Alternatives Evaluation to be used in DELCORA's Receiving Waters, as required by Paragraph II.C.4 of the CSO Control Policy;
- d. Development and implementation of a Hydrologic and Hydraulic Model ("H&H Model") Update and Calibration Plan;
- e. Development and implementation of a Water Quality Model Plan;
- f. Characterization of the service area and the Receiving Waters as required by CSO Control Policy Paragraph II.C.1 and associated guidance;
- g. Development and implementation of a Public Participation Plan in accordance with CSO Control Policy Paragraph II.C.2 and associated guidance;
- h. Development of a Financial Capability Assessment ("FCA") and an implementation schedule for the proposed CSO controls in accordance with CSO Control Policy Paragraph II.C.8 and "Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development," EPA 832-B-97-004, February 1997;
- i. Alternatives Evaluation and selection of proposed CSO long term controls as required by CSO Control Policy Paragraph II.C.4 and associated guidance;
- j. If DELCORA's selected CSO Control Measures include wet weather bypassing of any portion of the WRTP, development of a No Feasible Alternatives ("NFA") Analysis in accordance with CSO Control Policy Paragraph II.C.7, 40 CFR Part 122.41(m), and associated guidance;
- k. Development and implementation of a post-construction monitoring plan ("PCMP") in accordance with CSO Control Policy Paragraph II.C.9 and EPA's "CSO Post Construction Compliance Monitoring Guidance," EPA-833-K-11-001, May 2012; and

1. Appropriate revision of DELCORA's collection system operation and maintenance plan to reflect the implementation of the CSO Control Measures, as required by CSO Control Policy Paragraph II.C.6 and associated guidance.

11. Identification of Sensitive Areas and Pollutants of Concern. Within six (6) months after the Date of Lodging hereof, DELCORA shall submit to Plaintiffs for review and approval in accordance with the requirements of Section VI (Review and Approval of Submittals) a report or technical memorandum that identifies all Sensitive Areas and pollutants of concern ("PoCs") which are impacted by CSOs and are within the Model Area (as defined in Subparagraph 14.b, below), and for each of its Receiving Waters:

a. For each of its Receiving Waters, DELCORA shall contact appropriate agencies, access available data sources, and collect additional data as necessary to identify Sensitive Areas. DELCORA shall fully document all such contacts and the associated responses, and all additional investigations carried out to identify Sensitive Areas. DELCORA shall also identify any additional areas that, while not Sensitive Areas, have been identified by DELCORA as being appropriate for prioritization ("Priority Areas").

b. For each of its Receiving Waters, DELCORA shall conduct community outreach and appropriate studies to determine whether and to what extent primary contact recreation is occurring in each Receiving Water, and shall fully document its outreach and study methods, and its findings.

c. For each of its Receiving Waters, DELCORA shall review existing water quality data and recent PADEP CWA § 303(d) listings to identify PoCs. Even if a water body has not been formally listed as out of compliance with its water quality standards and designated

uses, if available data indicate such impairment exists and such impairment involves pollutants associated with CSOs, DELCORA shall consider the related pollutants to be PoCs.

12. Typical Year Rainfall Record. Within ninety (90) Days after the Date of Lodging hereof, DELCORA shall submit to Plaintiffs for review and approval in accordance with the requirements of Section VI (Review and Approval of Submittals) a report or technical memorandum describing DELCORA's statistical evaluation of long-term local rainfall patterns and the identification of an appropriate Typical Year for LTCP development purposes. This statistical evaluation shall utilize an appropriate local long-term rainfall record, and shall consider various appropriate rain year characteristics, including distributions of event rainfall totals, event durations, and peak and average rainfall intensities throughout the Model Area (as defined in Subparagraph 14.b, below).

13. Alternatives Evaluation Approach. Within nine (9) months after the Date of Lodging hereof, DELCORA shall propose, in coordination with EPA and PADEP and in accordance with Section II.C.4 of the CSO Control Policy, what approach to LTCP Alternative Evaluation (i.e., Presumption or Demonstration) is appropriate for each of DELCORA's Receiving Waters, and submit a written explanation of such determination to Plaintiffs for review and approval pursuant to Section VI (Review and Approval of Submittals). Use of the Presumption Approach will be allowed only where EPA and PADEP each agree that the specific presumption(s) to be used in a particular water body are reasonable pursuant to Section II.C.4.a of the CSO Control Policy.

14. Hydrologic and Hydraulic Model ("H&H Model") Update and Calibration Plan.

a. Not later than sixty (60) Days after the Date of Lodging of this Consent Decree, DELCORA shall submit a detailed plan to update, calibrate, and validate the H&H

Model to Plaintiffs for review and approval pursuant to Section VI (Review and Approval of Submittals). The plan shall address:

- (i) Model Update Methodology.
- (ii) Hydrologic and Hydraulic Model Refinement.
- (iii) Flow Data Assessment, and additional Rainfall and Flow

Monitoring to be Carried Out.

- (iv) Dry Weather Flow Calibration, including quantitative and qualitative calibration criteria.
- (v) Wet Weather Flow Calibration, including quantitative and qualitative calibration criteria.
- (vi) Model Validation; and
- (vii) Schedule for model development and implementation, including integration into LTCP development consistent with other dates required pursuant to this Consent Decree.

b. The updated H&H Model shall specifically include hydrologic representation of all areas tributary to the entire Collection System, as well as all areas tributary to all municipal wastewater collection and transmission systems that are, as of the date the LTCP is submitted, hydraulically connected to, or that directly or indirectly influence flow to, the CSOs and/or the WRTP, regardless of who owns or operates the system(s), including but not limited to the entire “Western Service Area” and “Eastern Service Area” depicted on Figure 1-2 of the Long-Term Control Plan submitted by DELCORA in April 2012, and attached as Appendix A hereto (collectively, the “Model Area”).

c. The H&H Model shall accurately represent the response of the Model Area to wet weather events, including the flows that result from wet weather events to and from DELCORA's CSOs and to the W RTP. To accomplish this, the model shall explicitly include all interceptors, diversion structures, CSOs, pump stations and major trunk sewers within the Collection System, as well as such pipes and appurtenances within the areas outside the Collection System that are needed to ensure adequate H&H Model accuracy. The H&H Model shall also include all sewers required for model continuity and/or that hydraulically impact or are downstream of known chronic unpermitted releases. DELCORA shall investigate and collect current system attribute information as necessary to update the H&H Model.

d. Rainfall and flow monitoring shall be carried out in accordance with current good industry practice for a period of at least twelve (12) months, in accordance with the schedule included in the approved plan. Rainfall data shall be obtained at a minimum effective density of 1 gauge/virtual radar-based gauge per square kilometer, for the entire Model Area. Flow monitoring shall be carried out using sufficient monitors to allow the accurate characterization of dry and wet weather flows from the entire Model Area, and the response of each CSO to wet weather flows.

e. For all rainfall and flow monitoring carried out in support of efforts to update and calibrate the H&H Model, DELCORA shall prepare and submit to Plaintiffs for review and comment in accordance with the requirements of Section VI (Review and Approval of Submittals) quarterly technical memoranda documenting the results and quality of the rainfall and flow monitoring data.

f. Within 30 Days after the H&H Model is revised, calibrated, and validated in accordance with the schedule set forth in the plan, DELCORA shall submit a Sewer System

H&H Model Report to Plaintiffs for review and approval in accordance with the requirements of Section VI (Review and Approval of Submittals). The Sewer System H&H Model Report shall specifically address each item set forth in Subparagraphs 14(a)(i)-(vii) hereof.

15. Water Quality Model Plan.

a. If DELCORA utilizes the Demonstration Approach in one or more of its Receiving Waters, then within ninety (90) Days after EPA reviews and approves the Alternatives Evaluation Approach pursuant to Paragraph 13 hereof and in accordance with Section II.C.4 of the CSO Control Policy, DELCORA shall submit to EPA and PADEP a Water Quality Model Plan for review and approval pursuant to Section VI (Review and Approval of Submittals), and shall implement the approved Water Quality Model Plan in accordance with the schedule included therein. For each water body in which the Demonstration Approach is to be used, the Water Quality Model Plan shall address:

- (i) Background, Scope and Purpose, Description of System;
- (ii) Water quality modeling software to be employed;
- (iii) Model configuration and development, including reaches to be modeled, and segmentation and boundary conditions;
- (iv) Calibration and validation (dry weather and wet weather), including events and data to be employed, detailed information regarding all additional data collection activities (if needed), quantitative and qualitative calibration criteria, and utilization of H&H Model outputs;
- (v) Use of the Water Quality Model to evaluate Typical Year in-stream conditions for each identified pollutant of concern;

(vi) Schedule for model development and implementation, including integration into LTCP development consistent with other dates required pursuant to this Consent Decree.

b. Within sixty (60) Days after the approved Water Quality Model Plan is fully implemented according to the schedule included therein, DELCORA shall submit to EPA and PADEP a Water Quality Model Report for review and approval pursuant to Section VI (Review and Approval of Submittals) which shall specifically address each item set forth in Paragraph 15(a)(i)-(vi).

16. Existing Service Area Characterization. Not later than two years (24) months after the Date of Lodging of this Consent Decree, DELCORA shall submit a characterization of the Model Area that includes all of the information required by CSO Control Policy Section II.C.1 and associated guidance to Plaintiffs for review and approval in accordance with the requirements of Section VI (Review and Approval of Submittals). The characterization shall include, but not be limited to, the following:

a. DELCORA shall use the updated, calibrated, and validated H&H Model to characterize the expected volume, frequency, and duration of CSO discharge events from each CSO during the Typical Year, based on an inter-event period of twelve (12) hours;

b. DELCORA shall incorporate the results of its investigation of Sensitive Areas;

c. DELCORA shall provide a characterization of current water quality in its Receiving Waters, based upon all available sampling data, and its efforts to identify PoCs.

d. The characterization submitted pursuant to this Paragraph shall include the entire Model Area, including the hydrology (i.e., runoff) from and within the entire Model Area.

17. Public Participation Plan. Within three (3) months after the Date of Lodging hereof, DELCORA shall submit to Plaintiffs for review and approval in accordance with the requirements of Section VI (Review and Approval of Submittals) a Public Participation Plan. This plan shall describe in detail how DELCORA will inform and solicit input to its updated LTCP from stakeholders, including the public, customer communities and the regulatory agencies. The plan shall specifically describe how the LTCP update process will: (i) address the impact of DELCORA's CSOs and LTCP on environmental justice populations, (ii) seek input from communities that may have historically borne a disproportionate share of the negative environmental consequences resulting from DELCORA's CSOs, and (iii) ensure that the LTCP and selected CSO Control Measures will not impose a disproportionate share of negative environmental consequences on such communities in the future. The plan shall also include a schedule for DELCORA's implementation of the plan.

18. Financial Capability Assessment. Within nine (9) months after the Date of Lodging hereof, DELCORA shall submit to EPA and PADEP for review and comment a draft Financial Capability Assessment ("FCA") in accordance with CSO Control Policy Paragraph II.C.8 and "Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development," EPA 832-B-97-004, February 1997 ("1997 FCA Guidance"), as such guidance has been interpreted by EPA, including but not limited to information on sewer rate setting and median household income and number of households in the entire Model Area (as defined in Paragraph 14.b above), as well as information on all other financial resources

available to DELCORA. Concurrent with the submission of the LTCP, DELCORA shall submit to Plaintiffs for review and approval in accordance with the requirements of Section VI (Review and Approval of Submittals) a proposed final FCA, including an implementation schedule for the proposed CSO controls in accordance with CSO Control Policy Paragraph II.C.8 and the 1997 FCA Guidance.

19. Alternatives Evaluation. DELCORA shall carry out and include in the LTCP an Alternatives Evaluation that complies with the requirements of the CSO Control Policy Section II.C.4, and that is consistent with EPA's "Guidance for Long-Term Control Plan," EPA 832-B-95-002, September 1995. The Alternatives Evaluation shall consist of: (1) a technology screening process, (2) a detailed evaluation of specific CSO control alternatives, and (3) selection of an appropriate range of proposed CSO controls to achieve compliance with the Clean Water Act. DELCORA shall specifically evaluate the feasibility of eliminating or relocating all CSO Outfalls that discharge to Sensitive Areas. DELCORA shall give a high priority to the control of those CSO Outfalls that discharge to Priority Areas, and those that have the highest frequency or greatest volume of discharge of wastewater.

a. Screening of Available CSO Control Technologies. DELCORA shall assess the technical feasibility of the use of a wide range of demonstrated CSO control technologies. DELCORA shall provide descriptions of the following types of CSO control technology – Source Controls (e.g., Green Infrastructure), Collection System Controls, Storage Technologies, and Treatment Technologies – and an assessment of the feasibility of applying each technology type for long-term CSO control in the Model Area, based on existing and anticipated future conditions affecting the Model Area. This evaluation is not intended to consider cost or cost effectiveness, but rather to exclude control technologies that are not

technically or physically applicable to the Model Area. Partial and complete separation of sewers in each CSO Outfall tributary area, and deep tunnel storage, shall be considered feasible technologies for this purpose and be carried forward for further evaluation. Expansion of the primary and secondary capacity of the WRTP shall also be considered feasible technologies for this purpose and be carried forward for further evaluation, as required by Section II.C.4 of the CSO Control Policy.

b. Evaluation of CSO Controls. DELCORA shall, based upon the results of the CSO technology screening described in the preceding Subparagraph, and applying sound engineering practices and thorough knowledge of the entire Model Area, identify an appropriately broad range of technically feasible CSO controls for detailed evaluation, regardless of the cost of each technically feasible CSO control. As appropriate, based on the characteristics of the entire Model Area, these CSO controls shall be CSO-specific, specific to clusters of CSOs, and specific to larger portions of the Model Area, including system-wide controls (e.g., all CSOs located along one bank of a water body). DELCORA may apply engineering judgment to limit its evaluation of functionally equivalent CSO controls. Where two CSO controls provide identical benefits (e.g., same sized surface and near-surface storage units, or consolidated storage that is the same volume as multiple storage units), and there is a clear cost difference between the two options, DELCORA may evaluate the lower cost option. For each technically feasible CSO control, DELCORA shall evaluate:

(i) the size of each CSO control necessary to reduce the number of untreated CSOs in a Typical Year on an annual basis to the following frequencies: 0, 2, 4, 6, 8, 12;

(ii) the estimated capital costs and annual O&M costs, expressed in present value, consistent, year-specific dollars, used to determine the total “project costs,” as that term is described in Section 3.4.1 of EPA’s “Guidance for Long Term Control Plans” (August 1995);

(iii) “knee of the curve” cost-performance for each CSO control that will allow for the comparison of the costs to:

(i) the reduction in volume of the CSOs; and

(ii) the reduction in CSOs; and

(iii) the reduction in PoC loading from CSOs.

(iv) For CSO controls applied to CSOs that discharge to water bodies for which the Demonstration Approach was determined to be appropriate, DELCORA shall utilize its calibrated Water Quality Model to assess the impact of each size of those controls on compliance with water quality standards within the Typical Year. If background sources currently prevent compliance with the water quality standards, DELCORA shall also assess the impact of each size of the CSO controls assuming background pollutant levels are reduced such that in-stream concentrations upstream of the CSO Outfalls are no more than seventy-five (75) percent of the applicable water quality standard.

(v) For CSO controls applied to CSOs that discharge to water bodies for which the Presumption Approach was determined to be appropriate, DELCORA shall evaluate a range of sizes for those controls. If that range of alternative sizes does not specifically include the allowed Presumption Criteria, DELCORA shall also evaluate each control alternative sized so as to meet the approved Presumption Criteria.

(vi) In analyzing the selection of CSO controls, the LTCP shall include an analysis of the LTCP's impact on communities that have historically borne a disproportionate share of the negative environmental consequences resulting from DELCORA's CSOs, including an explanation of how the LTCP ensures that the selected CSO Control Measures will mitigate those historical consequences and will not impose a disproportionate share of negative environmental consequences on such communities in the future.

c. Green Infrastructure. DELCORA shall consider Green Infrastructure ("GI") alternatives as part of the combined sewer system control alternatives under the LTCP. The LTCP shall contain the following minimum considerations for proposing a GI alternative to traditional controls:

(i) Identification of potential locations for GI. DELCORA shall specifically identify potential areas within the service area that would be suitable for development of a GI control measure. Each potential area shall be prioritized using considerations such as life-cycle cost (including cost of long-term operation and maintenance), the ability to develop effective GI control measures, availability of land, CSO control levels achieved, environmental and socio-economic benefits and impacts, and benefits and impacts to minority and low income neighborhoods.

(ii) Applicability and Performance Assessment. Any GI control measure proposed shall include an applicability and performance assessment that includes consideration of unique sewershed-specific features such as diversion structures/outfalls, Receiving Waters, and land uses. Information and data gathered from other existing GI control measure studies and/or projects can inform, to the extent appropriate, applicability and performance assessments required under this Paragraph.

(iii) For any GI controls to be sited on private property, or operated by an entity other than DELCORA, DELCORA shall describe how DELCORA will ensure the continual operation and maintenance of such controls.

d. Selection of CSO Control Measures. DELCORA shall select CSO Control Measures that together:

(i) Will result in its remaining CSOs complying with the CWA as demonstrated by its water quality modeling activities (in Demonstration Approach Receiving Waters); and as demonstrated by its H&H Modeling activities (in Presumption Approach Receiving Waters); and

(ii) Are technically implementable; and

(iii) Are cost effective.

e. Schedule. DELCORA shall include an expeditious schedule for implementation of the LTCP with appropriate interim milestones, including, for each CSO Control Measure, deadlines for:

(i) Initiating Design; and

(ii) Award of Construction Contract; and

(iii) Placement in Operation.

f. All CSO Control Measures must be Placed in Operation as soon as possible but in no event later than twenty (20) years after the Date of Lodging of this Consent Decree.

20. No Feasible Alternatives Analysis. If DELCORA's proposed CSO Control Measures include bypassing at the WRTP, DELCORA shall carry out a No Feasible Alternative

Analysis in accordance with Section II.C.7 of the CSO Control Policy and include such analysis in the LTCP.

21. Post Construction Monitoring Plan. The LTCP shall include a post-construction compliance monitoring plan that (i) evaluates the effectiveness of the CSO Control Measures, and (ii) verifies DELCORA's compliance with water quality-based CWA requirements and consistency with CSO Control Policy Paragraph II.C.9 and EPA's "CSO Post Construction Compliance Monitoring Guidance," EPA-833-K-11-001, May 2012.

22. Revision of Operation and Maintenance Plans. The LTCP shall identify those CSO Control Measures that require a revised operation and maintenance plan. The LTCP shall also include a procedure for the revision and dissemination of such plans within 60 days of the Placement in Operation of each such control. Each revised plan shall be consistent with Paragraph II.C.6 of the CSO Policy and associated guidance, and shall be provided to either Plaintiff upon request.

23. After approval of the updated LTCP and associated schedules by Plaintiffs pursuant to Section VI (Review and Approval of Submittals), any proposal by DELCORA to significantly modify the LTCP development schedule or the content of any of the major deliverables associated with development of the LTCP set forth in this Consent Decree shall follow the procedures set forth below in the Section XIX (Modification).

24. After approval of the LTCP and associated schedules by Plaintiffs pursuant to Section VI (Review and Approval of Submittals), the approved LTCP, including each CSO Control Measure and the post-construction compliance monitoring plan required by Paragraph 21 hereof, shall be incorporated by reference into this Consent Decree, and DELCORA shall immediately implement the terms of the approved LTCP, including but not limited to each CSO

Control Measure and the post-construction compliance monitoring plan required by Paragraph 21 hereof, and seek any required modifications to its NPDES Permit.

B. NINE MINIMUM CONTROLS

25. Concurrent with the submission of the LTCP, DELCORA shall submit to Plaintiffs for review and approval a revised and updated Nine Minimum Controls Plan (“NMC Plan”), in accordance with Section VI (Review and Approval of Submittals). The NMC Plan shall evaluate and document the current level of implementation of the NMCs within the Combined Sewer System, and shall identify actions necessary for achieving compliance with the CSO Control Policy for all NMCs and include an implementation schedule for completing those actions. The identified actions shall be in accordance with the CSO Control Policy and the “Guidance for Nine Minimum Controls,” EPA 832-13-95-003, May 1995.

26. Early Action CSO Control Measure. DELCORA shall Place in Operation a new EPS-1 Pump Station to reduce discharges from CSO Outfalls #2, #3, #4, #5, and #7, by December 31, 2018. DELCORA shall update its NMC Plan to reflect this Early Action CSO Control Measure within 60 days of its Placement in Operation.

C. GENERAL COMPLIANCE

27. Effluent Limits. Subject to Paragraph 85 hereof, commencing on the Day that DELCORA signs this Consent Decree, DELCORA shall comply with all final effluent limits set forth in the NPDES Permit, as updated or amended.

28. Dry Weather Overflows.

- a. All Dry Weather Overflows from the Collection System are prohibited.
- b. DELCORA must immediately report all Dry Weather Overflows to PADEP by telephone at 484-250-5900 and must provide written notification to PADEP and EPA within five Days of when DELCORA becomes aware of the Dry Weather Overflow.

c. Should DELCORA detect a Dry Weather Overflow, DELCORA shall begin corrective action immediately. DELCORA shall inspect the outfall(s) from which the Dry Weather Overflow occurred each subsequent Day until the overflow has been eliminated.

d. DELCORA shall summarize all such Dry Weather Overflows in the Semi-Annual Progress Report required under Section VII (Reporting). Nothing in this Section shall eliminate or minimize any additional notification or reporting required by the NPDES Permit.

29. Unpermitted Discharges. All Unpermitted Discharges are prohibited.

30. Elimination of Sanitary Sewer Overflows. SSOs are prohibited.

31. Unauthorized Releases. All Unauthorized Releases from the Combined Sewer System are prohibited.

32. Reporting Planned Changes and Non-Compliance.

a. DELCORA shall comply with the provisions of the NPDES Permit requiring the reporting of anticipated and unanticipated non-compliance with the NPDES Permit.

b. Whenever written notice of non-compliance is required to be given to PADEP pursuant to the NPDES Permit, DELCORA shall simultaneously notify EPA in accordance with Section XVI (Notices and Submissions).

33. Public Notification

a. The CSO Control Measures shall include a visual notification system. The system shall be installed at a minimum of three locations on each receiving water at public access locations. The system shall be designed to notify the public of the occurrence of Combined Sewer Overflows based on flow monitoring at representative CSO outfalls on each receiving water. The system shall comprise a series of colored lights, flags or pendants that shall operate as follows:

(i) Color A shall be displayed as long as flow is detected from the representative outfall;

(ii) Color B shall be displayed for 24 hours after flow is no longer detected from the representative outfall;

(iii) When operational, the visual notification system shall be described and explained on DELCORA's web site.

b. DELCORA shall finalize the details of the public notification system (e.g., selection of representative outfalls, locations, warning devices, and colors) for each receiving water in the final LTCP.

VI. REVIEW AND APPROVAL OF SUBMITTALS

34. After review of any plan, report, schedule or other document that is required to be submitted by DELCORA for EPA and PADEP approval (other than a request to modify this Consent Decree submitted pursuant to Section XIX (Modification)) EPA, after consultation with PADEP, may (a) approve the submittal, in whole or in part; (b) disapprove the submittal, in whole or in part; (c) approve the submittal upon specified conditions, directing DELCORA to modify its submission; or (d) any combination of the above. If EPA approves the submittal, EPA shall notify DELCORA in writing. If the submittal is disapproved in whole or in part, or approved with conditions, EPA shall describe the deficiencies or conditions in writing so that DELCORA can make the required modifications and provide EPA with a modified submittal. DELCORA may request a meeting and/or conference call with EPA to discuss the deficiencies, but no such request or meeting shall extend any deadlines set forth in this Section.

35. Within 60 Days following receipt of any notice from EPA disapproving a submittal or directing modification of a submittal pursuant to the preceding Paragraph (or within such longer time set forth in the notice or agreed to by the Parties), DELCORA shall submit a

modified submittal to EPA and PADEP for approval, subject only to DELCORA's right to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution). The modified submittal shall correct any deficiencies identified by EPA, and conform to any directions set forth in the notice provided pursuant to the preceding Paragraph. If DELCORA fails to submit a modified document to EPA within the 60-Day period, EPA retains the right to modify or develop any disapproved or conditionally approved portion of the submittal. DELCORA shall implement any such plan, report, schedule or other submittal as modified or developed by EPA, subject only to DELCORA's right to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution).

36. In the event that a resubmitted plan, report, schedule or other document or portion thereof is disapproved in whole or in part or approved with conditions by EPA, EPA shall provide DELCORA with a written notice describing the remaining deficiencies or conditions for approval. EPA may require DELCORA to correct the deficiencies or satisfy the conditions for approval of the submittal within a specified time frame, or EPA may modify or develop any disapproved or conditionally approved portion of the submittal. DELCORA may request a meeting and/or conference call with EPA to discuss the deficiencies, but no such request or meeting shall extend any deadlines set forth in this Section. Following receipt of a notice requiring DELCORA to correct deficiencies or satisfy conditions for approval, DELCORA shall submit a modified document in accordance with EPA's directions, subject only to DELCORA's right to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution).

37. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 34 or 36, above, DELCORA shall proceed, if directed by EPA, to take any action required by any non-deficient portion of DELCORA's submission, if such action can be undertaken independent of

the deficient portion of DELCORA's submission. Implementation of any non-deficient portion of a submission shall not relieve DELCORA of any liability for stipulated penalties under Section X (Stipulated Penalties) for the deficient portion(s).

38. Other than a modification of the LTCP, all plans and studies submitted pursuant to this Consent Decree shall be incorporated herein as part of this Consent Decree upon approval by EPA. A modification of the LTCP shall be incorporated into this Consent Decree only if the Parties enter into a written agreement pursuant to Paragraph 100.

39. DELCORA shall take all lawful and appropriate actions to facilitate the implementation of this Consent Decree, including prompt review and approval of any appropriate and responsive bids, contracts, or other documents, and, if applicable, prompt review and approval of any appropriate schedule of work necessary to maintain compliance with this Consent Decree.

40. EPA agrees to use its best efforts to expeditiously review and comment on submittals that DELCORA is required to submit to EPA for approval pursuant to this Consent Decree. If EPA fails to take action under Paragraph 34 with respect to a submittal or modified submittal, other than the LTCP or a proposal to modify this Consent Decree, within 90 Days of receiving the submittal or modified submittal, EPA shall extend any subsequent deadlines dependent upon approval of the submittal by the number of Days in excess of 90 that elapsed between: (i) the date that EPA and PADEP received the submittal or modified submittal; and (ii) the date that EPA took action under Paragraph 34. Such extension will not be effective unless EPA grants it in writing. Defendant may invoke dispute resolution under Section XII (Dispute Resolution) with respect to any disputes under this Paragraph.

VII. REPORTING

A. REPORTS

41. DELCORA will provide to EPA copies of all written notifications and reports that DELCORA is required to submit to PADEP relevant to this Consent Decree.

42. On the first Day of each Semi-Annual Period after the Date of Lodging of this Consent Decree and continuing until termination of this Consent Decree, DELCORA will submit to EPA and PADEP a progress report (“Semi-Annual Progress Report”) regarding the implementation of the requirements of this Consent Decree in the previous Semi-Annual Period. The Semi-Annual Progress Report will include at a minimum:

- a. A statement setting forth the deadlines and other terms that DELCORA was required by this Consent Decree to meet since the date of the last Semi-Annual Progress Report, whether and to what extent DELCORA has met these requirements, and the reasons for any noncompliance;
- b. A general description of the work completed within the prior Semi-Annual Period, and a projection of work to be performed pursuant to this Consent Decree during the next or succeeding Semi-Annual Period;
- c. A summary of all contacts with EPA and PADEP during the reporting period relating to CSOs, SSOs, or implementation of this Consent Decree;
- d. A statement of any exceedances of NPDES Permit limitations; and,
- e. A summary of all CSOs, SSOs, Unauthorized Releases, and Unpermitted Discharges occurring within the Semi-Annual Period including the actual or estimated frequency, duration, and volume of each CSO, SSO, Unauthorized Release, and Unpermitted Discharge.

B. CERTIFICATION AND ADMISSIBILITY

43. Any report or plan relating to monitoring data or any representation made by DELCORA as to its compliance with this Consent Decree that DELCORA is required by this Consent Decree to submit, including reports or plans, shall be signed by an official or authorized agent of DELCORA and shall include the following certification:

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

44. DELCORA shall not object to the authenticity of any report, plan, or other submission prepared in accordance with Paragraph 43 or the information contained in said report, plan or submission in any proceeding to enforce this Consent Decree.

VIII. FUNDING

45. Compliance with the terms of this Consent Decree by DELCORA is not conditioned on the receipt of federal or state grant or loan funds or upon DELCORA's financial capabilities. In addition, DELCORA's failure to comply is not excused by the lack of federal or state grant or loan funds, or by the processing of any applications for the same, or by DELCORA's financial capabilities.

IX. CIVIL PENALTY

46. DELCORA shall pay the sum of \$1,375,000 (One Million Three Hundred and Seventy Five Thousand Dollars) plus an additional sum for interest as explained below, as a civil penalty. Of this sum, Defendant shall pay one half to the United States, and one half to PADEP.

Payment shall be within 30 Days after the Effective Date. Interest shall accrue from the Date of Lodging at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

47. Defendant shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instruction to be provided to DELCORA, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, Phone: 215-861-8200. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States, et al. v. Delaware County Regional Water Control Authority*, and shall reference the civil action number and DOJ case number 90-5-1-1-10972, to the United States in accordance with Section XVI (Notices and Submissions) and to:

EPA Region III Docket Clerk
Office of Enforcement and Compliance Assistance (3EC00)
1650 Arch Street
Philadelphia, PA 19103.

48. Defendant shall pay the civil penalty due to PADEP by corporate check or the like made payable to “Commonwealth of Pennsylvania, Clean Water Fund” and sent to Program Manager, Clean Water Program, Department of Environmental Protection, Southeast Regional Office, 2 E. Main Street, Norristown, PA 19401. If Defendant fails to tender all or any portion of the civil penalty payment owed to the PADEP within 30 Days of the date of lodging of the Consent Decree, interest on the unpaid amount shall accrue in accordance with the provisions of 41 Pa. C.S. § 202 from the date of original payment until all amounts owed are paid.

X. STIPULATED PENALTIES

49. DELCORA shall be liable for stipulated penalties to the United States and PADEP for violations of this Consent Decree specified below. A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree, and within the specified time schedules established by or approved under this Consent Decree.

50. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IX of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late.

51. Reporting Requirements. For each failure to submit a timely and adequate plan, report, schedule, written notice, or other submission required by this Decree, except the final LTCP, DELCORA shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$500
Days 31-60	\$750
Days 61-90	\$1,000
Days 91 and over	\$1,500

52. Failure to submit final LTCP:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$2,000
Days 31-60	\$4,000
Days 61-90	\$6,000
Days 91 and over	\$8,000

53. Compliance Milestones.

a. For each failure to comply with any deadline for Placement in Operation of a CSO Control Measure set forth in the implementation schedule developed and approved

pursuant to the approved LTCP as required by Paragraphs 9, 19, and 24, DELCORA shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$2,000
Days 31-60	\$4,000
Days 61-90	\$5,000
Days 91 and over	\$6,000

b. For each failure to comply with a requirement of, or meet a deadline in, the Nine Minimum Controls Plan pursuant to Paragraph 25 (Nine Minimum Controls), DELCORA shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$500
Days 31-60	\$750
Days 61-90	\$1,000
Days 91 and over	\$2,000

54. General Compliance.

a. For each CSO that occurs more than 24 hours after precipitation, and for any other Unpermitted Discharge in violation of its NPDES Permit, including but not limited to each SSO and each Unauthorized Release, DELCORA shall pay the following stipulated penalties:

- (i) Within 2 years of Date of Lodging: \$3,000
- (ii) Between 2 years and 5 years from Date of Lodging: \$5,000
- (iii) More than 5 years from Date of Lodging: \$8,000

b. For each failure to comply with Paragraph 27, DELCORA shall pay the following stipulated penalties to Plaintiffs:

<u>Type of Permit Limit:</u>	<u>Penalty per violation:</u>
Daily or Instantaneous	\$1,000
Weekly	\$3,000
Monthly	\$5,000

c. For each failure to provide telephonic notification in compliance with Paragraph 28.b, DELCORA shall pay a stipulated penalty of \$2,000 per occurrence.

d. For each failure to comply with Subparagraph 28.c, DELCORA shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$750
Days 31-60	\$1,000
Days 61-90	\$2,000
Days 91 and over	\$4,000

55. Access Requirements. For each failure to allow access to the WRTP and Collection System in accordance with Section XV (Information Collection and Retention), below, DELCORA shall pay stipulated penalties of \$1,500 to Plaintiffs per Day.

56. Noncompliance with all other provisions of the Consent Decree: Stipulated penalties shall accrue for each Day of noncompliance with any requirement not otherwise covered by Paragraphs 50 through 55 hereof:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$400
Days 31-60	\$600
Days 61-90	\$800

57. 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.

58. Defendant shall pay stipulated penalties to the United States and PADEP within 30 Days of a written demand by either Plaintiff. Defendant shall pay 50% of the total stipulated penalty amount due to the United States and 50% percent to PADEP. The Plaintiff making a

demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

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

60. Stipulated penalties shall continue to accrue as provided in Paragraph 57, during any Dispute Resolution, but need not be paid until the following:

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

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

61. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable to the date DELCORA signed this Decree, with regard to any and all violations that have occurred after DELCORA signed, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

62. Defendant shall pay stipulated penalties owing to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instruction to be provided to DELCORA, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Eastern District of Pennsylvania, 235 N. Washington Ave., Suite 311, Scranton, PA 18503, Phone: 570-348-2800. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the stipulated penalties owed pursuant to the Consent Decree in *United States, et al. v. Delaware County Regional Water Control Authority*, shall state for which violation(s) the penalties are being paid, and shall reference the civil action number and DOJ case number 90-5-1-1-10972, to the United States in accordance with Section XVI (Notices and Submissions) and to:

EPA Region III Docket Clerk
Office of Enforcement and Compliance Assistance (3EC00)
1650 Arch Street
Philadelphia, PA 19103.

63. Defendant shall pay stipulated penalties owing to PADEP by corporate check or the like made payable to “Commonwealth of Pennsylvania, Clean Water Fund” and sent to Program Manager, Clean Water Program, Department of Environmental Protection, Southeast Regional Office, 2 E. Main Street, Norristown, PA 19401. The check shall be accompanied by a transmittal letter which shall state that the payment is for stipulated penalties and for which violation(s) the penalties are being paid.

64. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961 with respect to the United States and 41 Pa. C.S. § 202 with respect to PADEP, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to

limit the United States or PADEP from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

65. Subject to the provisions of Section XIII (Effect of Settlement), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or PADEP for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Water Act, 33 U.S.C. §§ 1251-1387, or the Pennsylvania Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.1-691.1001, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

XI. FORCE MAJEURE

66. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant; its agents, consultants, or contractors; or any entity controlled by Defendant that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

67. Any delays in implementation of this Consent Decree shall not be excused merely because DELCORA notified EPA and/or PADEP of the anticipated delay, regardless of whether such notification is contained in a report required under Section VII (Reporting) or any other communication.

68. When DELCORA knows, or should have known by the exercise of reasonable diligence, of an event that might delay completion of any requirement of this Consent Decree, whether or not the event is a Force Majeure, DELCORA will notify EPA and PADEP, in writing, within 14 Days after DELCORA first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice will indicate whether DELCORA claims that the delay should be excused due to a Force Majeure. The notice shall describe in detail the basis for DELCORA's contention that it experienced a Force Majeure delay, the anticipated duration of the delay, the cause or causes of the delay, all actions taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to timely notify EPA and PADEP may, at EPA's option, in consultation with PADEP, preclude DELCORA from asserting Force Majeure for the period beyond 14 Days it took DELCORA to provide the required notice.

69. If, after consultation with PADEP, EPA finds that a delay in performance is, or was, caused by a Force Majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify DELCORA in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event. If EPA does not grant such an extension within 30 Days of receiving DELCORA's written notice of the Force Majeure, DELCORA may consider the request for an extended time for performance to have been denied, and DELCORA may invoke dispute resolution.

70. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XII (Dispute Resolution) will apply, and DELCORA will have the burden of proving that the delay is, or was, caused by a Force Majeure and that the amount of additional time requested is necessary to compensate for that event.

71. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event will not extend any other compliance date. DELCORA will make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. DELCORA may petition for the extension of more than one compliance date in a single request.

XII. DISPUTE RESOLUTION

72. 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.

73. 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 Defendant sends the United States and PADEP a written "Notice of Dispute." Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, in consultation with PADEP, shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

74. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and PADEP 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 Defendant’s position and any supporting documentation relied upon by Defendant.

75. The United States, in consultation with PADEP, shall serve its Statement of Position within 30 Days of receipt of Defendant’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. The United States’ Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

76. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and PADEP, in accordance with Section XVI (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the United States’ Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant’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.

77. The United States, in consultation with PADEP, shall respond to Defendant’s motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

78. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 74 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA and/or PADEP under this Consent Decree, and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States and/or PADEP is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 74, Defendant shall bear the burden of proving that its actions were in compliance with this Consent Decree; or, if the dispute concerns the interpretation of this Consent Decree, Defendant shall bear the burden of demonstrating that its interpretation both (i) is consistent with the language of the Consent Decree, and (ii) better furthers the objectives of the Consent Decree than the position advanced by the United States.

79. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant 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 60. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. EFFECT OF SETTLEMENT

80. This Consent Decree resolves the civil claims of the United States and PADEP for the violations alleged in the Complaint through the Date of Lodging of this Consent Decree.

81. The United States and PADEP reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 80. This Consent Decree shall not be construed to limit the rights of the United States or PADEP to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 80. The United States and PADEP 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 WRTP and/or the Collection System, whether related to the violations addressed in this Consent Decree or otherwise.

82. In any subsequent administrative or judicial proceeding initiated by the United States or PADEP for injunctive relief, civil penalties, or other appropriate relief relating to the NDPES Permit (as updated or amended), the WRTP, and/or the Collection System, Defendant shall not assert, and may not maintain, any defense or claim against Plaintiffs 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 PADEP 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 80 of this Section.

83. This Consent Decree does not limit or affect the rights of Defendant or of the United States or PADEP 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 Defendant, except as otherwise provided by law.

84. This Consent Decree does not create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIV. NOT A PERMIT

85. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced by the United States or PADEP pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and PADEP do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §§ 1251-1387, or with any other provisions of federal, state, or local laws, regulations, or permits.

86. This Consent Decree does not authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system.

XV. INFORMATION COLLECTION AND RETENTION

87. The United States and PADEP, and their representatives, contractors, consultants, and attorneys shall have the right of entry into and upon DELCORA's WRTP and Collection System, at all reasonable times, upon proper 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 PADEP in accordance the terms of to this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by DELCORA or its representatives, contractors or consultants;
- d. obtain documentary evidence, including photographs and similar data;
- e. inspect and evaluate any portion or portions of the W RTP and/or the Collection System;
- f. inspect and review any records required to be kept under the terms and conditions of the Consent Decree, DELCORA's NPDES Permit, any future modifications or renewals thereof, and the CWA; and
- g. assess DELCORA's compliance with this Consent Decree.

88. Upon request, Defendant shall provide EPA and PADEP or their authorized representatives splits of any samples taken by Defendant. Upon request, EPA and PADEP shall provide Defendant splits of any sample taken by EPA or PADEP.

89. Defendant shall retain the following documents and electronically stored data for at least five years from the date they are created:

- a. All complaints received by Defendant or its contractors or agents from any person or entity pertaining to the matters addressed by this Consent Decree;
- b. All documents required to be created, submitted, or maintained pursuant to this Consent Decree; and
- c. Documentation of all measures undertaken by Defendant to comply with the terms of this Consent Decree.

90. Defendant shall retain the following documents and electronically stored data for at least five years after termination of this Consent Decree:

- a. All reports, plans, permits, and documents submitted to EPA or PADEP pursuant to this Consent Decree, including all underlying research and data;
- b. All data developed by, or on behalf of, Defendant pursuant to any post-construction monitoring activities; and
- c. All reports and data regarding water quality.

91. The information-retention requirements in this Section establish minimum retention periods that shall apply regardless of any contrary corporate or institutional policies or procedures but do not excuse Defendant from any legal requirement to retain documents or data for longer periods of time. At any time during this information-retention period, upon request by the United States or PADEP, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Consent Decree.

92. If, after the conclusion of the information-retention periods provided in this Section, Defendant desires to destroy any documents, records, or other information subject to the requirements of this Section, Defendant shall first notify the United States and PADEP at least 90 Days prior to such destruction and, upon request by the United States or PADEP, Defendant shall deliver any such documents, records, or other information to EPA or PADEP. Defendant 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 Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a

description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no final documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

93. Defendant 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 Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

94. 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 PADEP pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XVI. NOTICES AND SUBMISSIONS

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

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-10972

As to EPA:

Chief
NPDES Enforcement Branch (3WP42)
Water Protection Division
U.S. Environmental Protection Agency, Region 3
1650 Arch St.
Philadelphia, PA 19103-2029

And

Philip Yeany
Office of Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region 3
1650 Arch St.
Philadelphia, PA 19103-2029

As to PADEP:

Program Manager – Clean Water Program
Department of Environmental Protection
Southeast Regional Office
2 E. Main Street
Norristown, PA 19401

As to DELCORA:

ROBERT J. WILLERT
Executive Director
DELCORA
P.O. Box 999
Chester, PA 19016

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

97. 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.

XVII. EFFECTIVE DATE

98. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is approved or entered by the Court, or upon which a motion to enter this Consent Decree is granted, whichever comes first, as reflected on the Court's docket; provided, however, that Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall be void.

XVIII. RETENTION OF JURISDICTION

99. 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 XII (Dispute Resolution) and XIX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

100. Except as otherwise expressly set forth in this Consent Decree, the terms of this Consent Decree, including the attached appendices and the LTCP approved pursuant to this Consent Decree, may be modified only by a subsequent written agreement signed by all of the Parties or their successors in interest. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

101. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph b, the Party seeking the modification bears the burden of

demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XX. TERMINATION

102. After DELCORA has completed the requirements of Section V (Compliance Measures) of this Consent Decree, including but not limited to full implementation of the selected CSO Control Measures and the post-construction compliance monitoring plan pursuant to Paragraph 24 hereof, has thereafter maintained continuous satisfactory compliance with this Consent Decree and its NPDES Permits for a period of one year, has complied with all other requirements of this Consent Decree and has paid the civil penalty required under Section IX (Civil Penalty), and any accrued stipulated penalties as required by this Consent Decree, DELCORA may serve upon the United States and PADEP a Request for Termination. The Request for Termination shall state that DELCORA has satisfied the requirements of Section V of this Consent Decree and the requirements identified in this Paragraph 102, and shall include supporting documentation sufficient to demonstrate that it has satisfied the foregoing criteria. Provided, however, that Termination shall not be withheld as a result of *de minimis* effluent limit violations at the primary WRTP outfall (Outfall 001).

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

104. If the United States after consultation with PADEP does not agree that the Consent Decree may be terminated, Defendant may invoke Dispute Resolution under Section

XII (Dispute Resolution). However, Defendant shall not seek formal dispute resolution under Paragraph 74 of any dispute regarding termination until at least 90 Days after service of its Request for Termination.

XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

105. This Consent Decree will be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the public comments regarding this Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendant 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 Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

XXII. SIGNATORIES/SERVICE

106. Each undersigned representative of Defendant and PADEP 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.

107. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant 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.

XXIII. COSTS OF SUIT

108. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and PADEP 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 Defendant.

XXIV. INTEGRATION

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

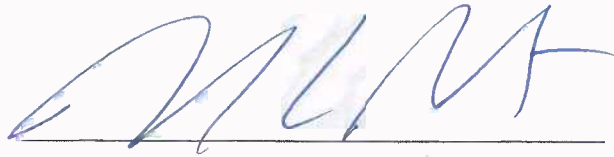
XXV. FINAL JUDGMENT

110. 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, PADEP and Defendant. The Court finds that there is no just reason for delay and, therefore, enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

XXVI. APPENDICES

Appendix A: Figure 1-2 to April 2012 LTCP

THE UNDERSIGNED ~~WALTER~~th ~~the~~ Court Clerk in the matter of United States
SO ORDERED THIS 10 DAY OF NOVEMBER, 2015

A handwritten signature in blue ink, appearing to be "M. A. H.", written over a horizontal line.

UNITED STATES DISTRICT JUDGE