

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)
)
 Plaintiffs,)
)
 v.) Civil Action No. _____
)
 THE CITY OF PERTH AMBOY,)
 NEW JERSEY A Municipal Corporation,)
 and THE STATE OF NEW JERSEY)
)
 Defendants.)
 _____)

CONSENT DECREE

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I. BACKGROUND

A. The United States of America, on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), (the “Plaintiff”), has filed a Complaint in this action concurrently with this Consent Decree, alleging that Defendant the City of Perth Amboy, New Jersey (“City”), violated Section 301(a) and the permit issued pursuant to Section 402(a) of the Clean Water Act (“Act”), 33 U.S.C. §§ 1311(a) and 1342(a);

B. The City owns and operates a combined sewer system (“CSS”), with small areas of separate sewers, that collects sewage and stormwater and pumps it to a wastewater treatment plant (“WWTP”) owned and operated by the Middlesex County Utilities Authority (“MCUA”). The City’s CSS encompasses approximately 311,000 linear feet of sewer lines, 4 pump stations, 1,250 stormwater catch basins, and 16 combined sewer overflow points (“CSOs”), eight of which discharge untreated sewage and stormwater to the Arthur Kill River and eight of which discharge untreated sewage and stormwater to the Raritan River. Both the Arthur Kill and Raritan Rivers flow into the Raritan Bay;

C. The Complaint seeks injunctive relief and civil penalties from the City, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. §§1319(b) and (d), for violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a), and of its New Jersey Pollutant Discharge Elimination System (“NJPDES”) General Permit for Combined Sewer Systems, NJPDES Permit No. NJ0105023 (“CSS General Permit”), that was issued pursuant to Section 402(a) of the Act, 33 U.S.C. § 1342(a). The State of New Jersey (“New Jersey”) is a defendant in this action solely for the purposes of Section 309(e) of the Act, 33 U.S.C. §1319(e);

D. The City does not admit liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

E. Entry of this Consent Decree by the Court will resolve all claims in the Complaint; and

F. The United States and the City (collectively, the “Parties”) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without adjudication or admission of any issue of fact or law, except as otherwise provided herein, IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, and over the Parties, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d). Venue lies in this judicial district pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the City is located in this judicial district and because the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, the City consents to the Court’s jurisdiction over this Decree or such action, and over the City, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, the City agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d).

III. APPLICABILITY

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

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

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

6. No transfer of ownership or operation of the CSS, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of this Consent Decree are implemented: unless (1) the transferee agrees to undertake the obligations required by Sections VI (Compliance Requirements) and VIII (Stipulated Penalties) of this Decree and to be substituted for the City as a Party under the Decree and thus be bound by the terms thereof, and (2) the United States consents to relieve the City of its obligations. The decision of the United States to refuse to approve the substitution of the transferee for the City shall not be subject to judicial review. At least 30 Days prior to such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States Department of Justice and EPA Region 2, in accordance with Section XIV (Notices and Submissions). Any attempt to transfer ownership or operation of the CSS without complying with this Paragraph constitutes a violation of this Consent Decree.

IV. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Clean Water Act or in regulations promulgated pursuant to the Clean Water Act shall have the meanings assigned to them in the Clean Water Act or such regulations, unless otherwise provided in this Decree.

Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. “Arthur Kill River” shall mean the navigable river flowing along the eastern coast of the City and into the Raritan Bay, to the south of the City.

b. “City” shall mean the City of Perth Amboy, New Jersey, the Defendant in the above-captioned action. Unless otherwise specified, references to locations in this Consent Decree are to locations within the City.

c. “Combined Sewer Overflow” or “CSO” shall mean any discharge from the City’s Combined Sewer System at a permitted point.

d. “Combined Sewer System” or “CSS” shall mean the portion of the City’s sewer system designed to convey municipal sewage (domestic, commercial or industrial wastewater) and stormwater through a single-pipe system to the Middlesex County Utilities Authority wastewater treatment plant or to a CSO structure.

e. “Complaint” shall mean the Complaint filed by the United States in this action.

f. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices hereto (listed in Section XXIII.).

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

day.

h. “Effective Date” shall have the definition provided in Section XV.

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

j. “Force Main” shall mean a pipe that receives wastewater from the discharge side of a pump and conveys the wastewater under pressure.

k. “Gravity Sewer Line” shall mean a pipe that receives and contains wastewater and conveys the wastewater normally not under pressure or with any assistance other than the influence of gravity.

l. “Inflow” shall mean water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross-connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm water, surface runoff, street wash waters, or drainage, as provided in 40 C.F.R. § 35.2005(b)(21).

m. “Major Gravity Line” shall mean any of the following:

i. A Gravity Sewer Line that is 12 inches in diameter or larger;

ii. Any eight-inch Gravity Sewer Line that is necessary to accurately represent flow attributable to a service area in a Sewershed;

iii. A Gravity Sewer Line that conveys wastewater from one Pumping Station service area to another Pumping Station service area; or

iv. A Gravity Sewer Line downstream of any capacity-related SSO or CSO.

n. “NJPDES Permit” shall mean New Jersey Pollutant Discharge Elimination System permit number NJ0105023 issued to the City pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and Section 402 of the Act, 33 U.S.C. § 1342, for the City’s CSS, and any future extended, modified, or reissued permit therefore.

- o. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral, unless specified otherwise.
- p. “Parties” shall mean the United States and the City of Perth Amboy.
- q. “Pumping Station” shall mean facilities comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that pumping station.
- r. “Raritan River” shall mean the navigable river flowing along the southern coast of the City and into the Raritan Bay, to the south of the City.
- s. “Sanitary Sewer Overflow” or “SSO” shall mean an overflow, spill, diversion, or release of wastewater from or caused by the Sanitary Sewer System (“SSS”). This term shall include:
- i. Discharges to waters of the State or United States from the SSS; and
 - ii. Any release of wastewater from the SSS to public or private property (including building or private property backups) that does not reach waters of the United States or the State.
- t. “Sanitary Sewer System” or “SSS” shall mean the system of sewers intended to carry liquid and water-carried waste to the MCUA WWTP, or to any Sanitary Sewer Overflow structure, from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm and surface waters that are not admitted intentionally.
- u. “Sewershed” shall mean a section of the City’s system that is a distinct drainage or wastewater collection area, and which is designated as such by the City.
- v. “Section” shall mean a portion of this Decree identified by a roman numeral.
- w. “Sewer System” shall mean the City’s wastewater collection and transmission system, including all pipes, interceptors, Force Mains, Gravity Sewer Lines, lift stations, Pumping Stations, manholes and appurtenances thereto, owned or operated by the City, and

which are located, or connected to system components located in the City.

x. “State” shall mean the State of New Jersey.

y. “United States” shall mean the United States of America, acting on behalf of EPA.

z. “WWTP” shall mean the Middlesex County Utilities Authority’s wastewater treatment plant and all of its components, located at 2571 Main Street, Sayreville, New Jersey 08872.

aa. “Work” shall mean all activities the City is required to perform under this Decree.

V. CIVIL PENALTY

8. In satisfaction of the civil claims asserted by the United States in the Complaint filed in this matter, within thirty (30) Days after the Effective Date, the City shall pay a civil penalty of \$ 17,000.00 to the United States, together with an additional amount as interest thereon, accruing from the date on which the Decree is lodged with the Court through the date of payment, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. Payment to the United States shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with instructions to be provided to the City, following lodging of the Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of New Jersey. At the time of payment, the City 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 of America v. the City of Perth Amboy, and shall reference the civil action number and DOJ case number 90-5-1-1-09500, to the United States in accordance

with Section XIV (Notices and Submissions); by email to
and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268.

VI. COMPLIANCE REQUIREMENTS

10. The City shall implement the projects and programs identified in this Section and in Appendices A and B in order to ensure that the City's CSS complies with the requirements of the Act, the regulations promulgated thereunder, the State water pollution control laws, the regulations promulgated under such laws, and the City's NJPDES Permit. The City shall implement all such measures in a timely manner, in accordance with all schedules required hereunder or otherwise approved by EPA, in order to control and minimize all CSOs.

11. Compliance with NJPDES Permit. The City shall at all times comply with all requirements of the City's NJPDES Permit including, but not limited to:

- a. Maximizing the conveyance of wastewater to the WWTP in accordance with Permit Part IV § C.6;
- b. Conducting annual inspections of all CSO control facilities, in accordance with Permit Part IV § D;
- c. Maintaining, implementing, and annually updating, as necessary, its Combined Sewer Overflow Pollution Prevention Plan ("CSOPPP"), in accordance with Permit Part IV §§ D and E; and
- d. Submitting annual permit compliance certifications in accordance with Permit Part IV § D.2.

Any failure to comply with all requirements of the City's NJPDES Permit shall constitute a violation of this Consent Decree.

12. System-wide Engineering Assessment and Corrective Action Plan.

a. Pursuant to Administrative Order CWA-02-2008-3033, issued to the City by EPA on July 25, 2008, the City was required to conduct an inspection and prepare an engineering assessment ("Inspection and Engineering Assessment") of the entire CSS, including, but not limited to, all regulators and tide gates, pump stations, interceptors, force mains, gravity sewer lines, manholes, sedimentation levels and composition, and debris accumulation. As part of the Inspection and Engineering Assessment, the City developed a plan for performing any cleaning, maintenance, rehabilitation measures, or corrective actions necessary to ensure that the CSS is operating properly ("Corrective Action Plan").

b. As part of the Corrective Action Plan, the City was required to develop a schedule to implement ("Implementation Schedule") the recommendations contained in the Inspection and Engineering Assessment. The Implementation Schedule is attached as Appendix A. The City shall perform the work identified in the Corrective Action Plan in accordance with the Implementation Schedule set forth in Appendix A. Failure to perform any work contained in the Corrective Action Plan shall constitute a violation of this Consent Decree.

13. Flow Monitoring Plan. The City shall conduct a 6 month pilot study using in-pipe flow monitoring near four (4) CSO outfall locations; two with flow meters and two with stage measurement meters.

a. Within 45 days of the Date of Entry, the City shall submit to EPA for approval, a protocol for the implementation of a 6 month pilot study ("Pilot Study") using in-pipe flow monitoring near 4 CSO outfall locations; 2 with flow meters and 2 with stage measurement

meters that provide information most representative of the flow for the entire system. The Pilot Study shall, at a minimum, require:

- i. 2 flow monitors that monitor the volume of water discharged from each of 2 identified outfalls and 2 stage measurement meters that indicate when an overflow occurs at 2 additional identified outfalls including the start time and end time associated with each occurrence of a discharge;
- ii. The flow monitors and stage measurement meters are to be located to measure overflow volume, frequency and duration; and
- iii. Whenever a CSO overflow occurs at the 2 outfalls with the flow monitors, the City shall calculate the overflow volume and duration using the Storm Water Management Model method (“SWMM”). The City shall compare flow monitoring readings with SWMM generated results for each overflow event.
- iv. Whenever a CSO overflow occurs at the 2 outfalls with the stage measurement meters, the City shall record the start and end times for each event.

b. Within three (3) months of completion of the Pilot Study, the City shall submit a report to EPA for review and approval. The report shall provide the results of the Pilot Study and make recommendations based on the analysis of the Pilot Study results. The City shall continue to operate flow monitoring devices and stage measurement meters that monitor, at a minimum, total flow volume, frequency and duration for each overflow event at the 4 CSO outfall locations, unless the City demonstrates that such monitoring is not necessary based on the results of the Pilot Study. The results of the continued monitoring shall be provided in the Quarterly Reports and include:

- i. A table summarizing CSO activity at monitored outfall points;
- ii. A comparison of flow monitoring readings with SWMM generated results for each overflow event; and
- iii. Information about dry weather overflow events, in addition to the volume, frequency and duration of the dry weather overflow.

c. At the conclusion of the Pilot Study, if the City determines that sewer overflow volumes and duration measured by flow monitoring correlates to sewer overflow volumes and durations calculated using the SWMM, the City may request to terminate implementation of all or a portion of the flow monitoring. After review of the City's request, EPA shall in writing: a) approve the request; b) approve the request upon specified conditions; c) approve part of the request and disapprove the remainder; or d) disapprove the request. The determination of whether the City may terminate all or part of the flow monitoring program is in the sole discretion of EPA.

14. Operations and Maintenance Manual. Pursuant to Administrative Order CWA-02-2008-3033, issued to the City by EPA on July 25, 2008, the City has developed a revised operations and maintenance manual ("O&M Manual"). The O&M Manual is attached as Appendix B. The O&M Manual requires periodic inspections of the CSS, and the use of inspection reporting forms to ensure that the CSS is a) maximizing the conveyance of wastewater to the WWTP, and b) minimizing discharges of untreated wastewater into the Arthur Kill and the Raritan River. The City shall implement its O&M Manual, and submit inspection reports to EPA in accordance with the requirements of Section VII (Reporting Requirements), until Termination. Failure to implement the O&M Manual shall constitute a violation of this Consent Decree.

15. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission.

16. If the submission is approved pursuant to Paragraph 15.a), the City shall take all actions required by the plan, report, or other document, in accordance with the schedules and

requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 15.b) or c), the City shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to the City's right to dispute only the specified conditions or the disapproved portions, under Section X (Dispute Resolution).

17. If the submission is disapproved in whole or in part pursuant to Paragraph 15.c) or d), the city shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, the City shall proceed in accordance with the preceding Paragraph.

18. Any stipulated penalties applicable to the original submission, as provided in Section VIII (Stipulated Penalties), shall accrue during the 45 Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the City's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

19. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may require the City to correct any deficiencies, in accordance with the preceding Paragraphs, subject to the City's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

VII. REPORTING REQUIREMENTS

20. Within thirty (30) Days after the end of each calendar-quarter (i.e. April 30, July

30, October 30, and January 30) after lodging of this Consent Decree, until termination of this Decree pursuant to Section XXI, the City shall submit a quarterly report.

- a. The Quarterly Report shall include the following information:
 - i. A narrative description of all work performed in the previous quarter pursuant to the overall system engineering assessment and corrective action plan;
 - ii. A narrative description of all work planned for next quarter;
 - iii. Copies of all completed reporting sheets used to document assessment-related inspections of the City's:
 1. diversion chambers;
 2. tide gates;
 3. CSOs;
 4. force mains;
 5. manholes;
 6. pump stations; and
 7. interceptors;
 - iv. Copies of completed reporting sheets used to document routine, periodic inspections of the City's:
 1. diversion chambers;
 2. tide gates;
 3. CSOs;
 4. force mains;
 5. manholes;
 6. pump stations; and
 7. interceptors;
 - v. Copies of completed reporting sheets used to document the City's implementation of:
 1. the weekly flushing program; and
 2. the wet weather operating guidelines.
 - vi. System maintenance reports, which shall include:
 1. A pump station summary (as provided in previous quarterly reports);
 2. Scheduled Preventative and Responsive Collection System Maintenance (as provided in previous quarterly reports);

3. Tabulation of grit, sediment and floatable debris removed from the collection system and the manner in which it was disposed;
4. Flow data for flow pumped to the Middlesex County Utilities Authority. This data must include:
 - a. daily total flow,
 - b. daily peak flow, and
 - c. daily rainfall amount;
5. Tabulation of repairs made during the previous quarter and scheduled repairs for upcoming quarter (as provided in previous quarterly reports);
6. Documentation that identifies and describes any residential complaints regarding sewer overflows, including basement backups, and how the City addressed the overflows and ultimately resolved the complaints.

b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the City violates, or has reason to believe that it may violate, any requirement of this Consent Decree, the City shall notify EPA of such violation and its likely duration, in writing, within ten working Days of the Day the City first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, the City shall so state in the report. The City shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves the City of its obligation to provide the notice required by Section IX (Force Majeure).

21. Whenever any violation of this Consent Decree or any other event affecting the City's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, the City shall notify EPA and NJDEP orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after the City first knew of

the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

22. All reports shall be submitted to the persons designated in Section XIV (Notices and Submissions).

23. Each report submitted by the City under this Section shall be signed by an official of the City and include the following certification:

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

This certification requirement does not apply to emergency or similar notifications where compliance would be impracticable.

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

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

VIII. STIPULATED PENALTIES

26. The City shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless modified or affected by Section IX. (Force Majeure). A violation includes failing to perform any obligation required by the terms of this

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

27. Late Payment of Civil Penalty. If the City fails to pay the civil penalty required to be paid under Section V when due, the City shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late.

28. NJPDES Permit Violations. The following stipulated penalties shall accrue per violation per Day for each violation of any requirement of the City's NJPDES Permit:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 st through 30 th Day
\$1,500	31 st through 60 th Day
\$2,000	61 st Day and beyond

29. Compliance Milestones. The following stipulated penalties shall accrue per violation per Day for each violation of the other requirements identified in Section VI (Compliance Requirements) and incorporated therein by the relevant Appendices:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 st through 30 th Day
\$2,000	31 st through 60 th Day
\$3,000	61 st Day and beyond

30. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements in Section VII:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1 st through 30 th Day
\$500	31 st through 60 th Day
\$1,000	61 st Day and beyond

31. 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. Separate stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

32. The City shall pay any stipulated penalties to the United States within thirty (30) Days of written demand by the United States. The City shall pay the total stipulated penalty amount due to the United States.

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

34. Stipulated penalties shall continue to accrue as provided in Paragraph 31 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, the City shall pay accrued penalties determined to be owed, together with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

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

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

35. Obligations Prior to the Effective Date. Upon the Effective Date of this Consent Decree, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations of Paragraphs 10-14 that have occurred between the date of

lodging and the Effective Date of the Consent Decree, provided that stipulated penalties that may have accrued prior to the Effective Day may not be collected unless and until this Consent Decree is entered by the Court.

36. The City shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, and the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

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

38. Subject to the provisions of Section XII (Effect of Settlement and Reservation of Rights), 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 for the City's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Act, the City shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

39. "Force Majeure," for purposes of this Decree, is defined as any event arising from causes beyond the control of the City, of any entity controlled by the City, or of the City's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the City's best efforts to fulfill the obligation. The requirement that the City exercise

“best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include the City’s financial inability to perform any obligation under this Consent Decree.

40. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the City shall provide notice orally and by electronic or facsimile transmission to EPA, in accordance with Section XIV (Notices and Submissions) within 48 hours of when the City first knew that the event might cause a delay. Within ten (10) Days thereafter, the City shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the City’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The City shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the City from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The City shall be deemed to know of any circumstance of which the City, any entity controlled by the City, or the City’s contractors knew or should have known.

41. If EPA agrees that the delay or anticipated delay is attributable to a force majeure

event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by 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 the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

42. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the City in writing of its decision.

43. If the City elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs 39, above. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

44. Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. The City's failure to seek resolution of a dispute under this Section shall preclude the City from raising any such issue as a defense to an action by the United States to enforce any obligation of the City arising under this Decree.

45. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the City sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below.

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

47. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of the City's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

48. The City may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within twenty (20)

Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the City's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree, as well as such other requirements of the Local Rules of Court.

49. The United States shall respond to the City's motion within the time period allowed by the Local Rules of this Court. The City may file a reply memorandum, to the extent permitted by the Local Rules.

50. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 46 (Formal Dispute Resolution) pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree, the adequacy of the performance of work undertaken pursuant to this Consent Decree, and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the City shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 46 (Formal Dispute Resolution), the City shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the objectives of the Consent Decree.

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

XI. INFORMATION COLLECTION AND RETENTION

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

- a. Monitor the progress of activities required under this Consent Decree;
- b. Verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. Obtain samples and, upon request, splits of any samples taken by the City or its representatives, contractors, or consultants;
- d. Obtain documentary evidence, including photographs and similar data; and
- e. Assess the City's compliance with this Consent Decree.

53. Upon request, the City shall provide EPA or its authorized representatives, splits of any samples taken by the City. Upon request, EPA shall provide the City splits of any samples taken by EPA.

54. Until five years after termination of this Consent Decree, the City shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents,

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

55. At the conclusion of the information-retention period provided in the preceding Paragraph, the City shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, the City shall deliver any such documents, records, or other information to EPA. The City may assert that certain documents, records, or other information requested by the United States is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the City asserts such a privilege, it shall provide the following:

- a. The title of the document, record, or information;
- b. The date of the document, record, or information;
- c. The name and title of each author of the document, record, or information;
- d. The name and title of each addressee and recipient;
- e. A description of the subject of the document, record, or information; and
- f. The privilege asserted by the City.

However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

56. The City may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that the City seeks to protect as CBI, the City shall follow the procedures set forth in 40 C.F.R. Part 2.

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

XII. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

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

59. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 58. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or State laws, regulations, or permit conditions, except as expressly specified in Paragraph 58.

60. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the City’s Sewer System, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-

splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 58 of this Section.

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

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

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

XIII. COSTS

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

XIV. NOTICES AND SUBMISSIONS

65. 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:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-09500

and

Chief, Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway – 20th Floor
New York, NY 10007

To EPA:

Chief, Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, NY 10007

To the City:

Mayor and Business Administrator
City of Perth Amboy
260 High Street
Perth Amboy, New Jersey 08861

Middlesex Water USA-PA
Luis Perez-Jiminez
260 High Street
Perth Amboy, New Jersey 08861

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

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

XV. EFFECTIVE DATE

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

XVI. RETENTION OF JURISDICTION

69. 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 X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

70. Unless otherwise provided therein, the terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

71. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution); provided, however, that instead of the burden of proof provided by Section X (Dispute Resolution), Paragraph 50, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Fed. R. Civ. P. 60(b).

XVIII. PUBLIC PARTICIPATION

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

XIX. SIGNATORIES/SERVICE

73. Each undersigned representative of the City and the Assistant Attorney General for the Environment and Natural Resources Division of the U.S. 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.

74. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. The City agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service

requirements set forth in Fed. R. Civ. P. 4 and 5 and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

75. 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 Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXI. TERMINATION

76. After the City has completed the requirements of Section VI (Compliance Requirements) of this Decree, has thereafter maintained satisfactory compliance, as determined by EPA, with this Decree and its NJPDES Permit for a period of 12 consecutive months, has complied with all other requirements of this Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, the City may serve upon the United States a Request for Termination, stating that the City has satisfied those requirements, together with all necessary supporting documentation.

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

78. If the United States does not agree that the Decree may be terminated, the City may invoke Dispute Resolution under Section X. However, the City shall not seek Dispute Resolution of any dispute regarding termination until sixty (60) Days after service of its Request for Termination.

XXII. FINAL JUDGMENT

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

XXIII. APPENDICES

80. The following appendices are attached to and part of this Consent Decree:

a. Appendix A: City of Perth Amboy Combined Sewer System Corrective Action Implementation Schedule; and

b. Appendix B: Perth Amboy Sewerage Department Operation and Maintenance Manual.

Dated and entered this _____ day of _____, 2012.

UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of the Consent Decree in United States v. The City of Perth Amboy.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Date:

5/24/12

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date:

6/5/12

MYLES E. FLINT, II
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
(202) 307-1859

WE HEREBY CONSENT to the entry of the Consent Decree in United States v. The City of Perth Amboy.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

PAUL J. FISHMAN
UNITED STATES ATTORNEY
DISTRICT OF NEW JERSEY

PETER O'MALLEY
Peter Rodino Federal Building
970 Broad Street Suite 700
Newark, New Jersey 07102
973-645-2921

WE HEREBY CONSENT to the entry of the Consent Decree in United States v. The City of Perth Amboy.

FOR PLAINTIFF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY:

Date: 5.11.12

MARK POLLINS
Division Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: 5/3/12

LOREN DENTON
Chief, Municipal Enforcement Branch
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency


Date: 5/3/2012

ROBERT D. FENTRESS
Attorney-Advisor
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

WE HEREBY CONSENT to the entry of the Consent Decree in United States v. The City of Perth Amboy.

FOR PLAINTIFF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,
REGION 2:

Date: 4-6-12

 JUDITH ENCK
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

Date: 3-29-12

EDUARDO J. GONZALEZ
CHRISTOPHER SAPORITA
Assistant Regional Counsel
United States Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

WE HEREBY CONSENT to the entry of the Consent Decree in United States v. The City of Perth Amboy.

FOR THE CITY OF PERTH AMBOY

Date: 3/14/2012

WILDA DIAZ
Mayor
City of Perth Amboy
260 High Street
Perth Amboy, NJ 08861

Approved as to form:

Mark J. Blunda