

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
COMMONWEALTH OF MASSACHUSETTS)	CIVIL ACTION NO. 1:24-cv-10290
)	
Plaintiff-Intervenor,)	
)	
v.)	
)	
CITY OF LOWELL, MASSACHUSETTS,)	
)	
Defendant.)	

CONSENT DECREE

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Attachment A. Wastewater Collection System CMOM Program
Self-Assessment Checklist

WHEREAS Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint, along with the lodging of this Consent Decree, alleging that the City of Lowell, Massachusetts (“City,” “Lowell,” or “Defendant”) has discharged pollutants into waters of the United States from Combined Sewer Overflow (“CSO”) outfalls and certain unauthorized discharge points in its wastewater collection system in violation of its National Pollutant Discharge Elimination System (“NPDES”) permit and Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a);

WHEREAS, on May 1, 2003, EPA issued a NPDES General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (“2003 Small MS4 General Permit”) under CWA section 402(p), 33 U.S.C. § 1342(p), for which Lowell applied and under which it received coverage;

WHEREAS, on April 4, 2016, EPA reissued a NPDES general permit for discharges of stormwater from small Municipal Separate Storm Sewer Systems (“MS4s”) in Massachusetts (“2016 Small MS4 General Permit”), and Lowell, along with several other communities, filed a petition for review of the permit;

WHEREAS, as result of mediation among the parties to the permit appeal, on December 27, 2019, EPA published three proposed settlement agreements in the Federal Register for a 30-day public comment period (*see Notice; Proposed Settlement Agreements, Clean Water Act Claims*,” 84 FR 71407 (Dec. 27, 2019)), and subsequently executed the settlement agreements on April 15, 2020;

WHEREAS, pursuant to the April 15, 2020 settlement agreement with Lowell, EPA finalized modifications to the 2016 Small MS4 General Permit on December 7, 2020, and, as part of that settlement, Lowell agreed to dismiss without prejudice its petition for review of the

permit, and EPA agreed to process and take final action on Lowell's individual permit application, but that, pending such final action, the City would remain subject to the 2003 Small MS4 General Permit;

WHEREAS, because EPA has not yet taken final action on Lowell's individual permit application for its MS4 discharges, the City continues to operate under, and is subject to the earlier, 2003 Small MS4 General Permit;

WHEREAS, the United States' Complaint against the City alleges that the City violated and continues to violate Section 301 of the CWA by discharging pollutants into waters of the United States from its MS4 storm drains without authorization under the 2003 Small MS4 General Permit, any other NPDES permit, or any other provision of the Act;

WHEREAS, the City is the owner and, through the Lowell Regional Wastewater Utility ("LRWU"), a department of the City of Lowell, an operator of a publicly-owned treatment works ("POTW") consisting of a sanitary sewer collection system ("Collection System") and a wastewater treatment facility, and nine CSO outfalls, from which it discharges "pollutants," as defined in Sections 502(6) and (12) of the CWA, 33 U.S.C. §§ 1362(6) and (12), from "point sources," as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), into the Merrimack River, the Concord River, and/or Beaver Brook, all of which are "navigable waters," as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7);

WHEREAS, On September 1, 2005, EPA, under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, reissued NPDES permit number MA0100633 to the City, which was reissued, after an administrative appeal, on June 29, 2020 (the "Permit"), and which authorizes the City to discharge pollutants from specified CSO outfalls to the Merrimack River, Concord

River, or Beaver Brook, provided that, among other things, the discharges do not cause or contribute to violations of federal or state water quality standards;

WHEREAS, in 1988, the United States, the Commonwealth, and the City entered into a consent decree in *United States and Commonwealth of Massachusetts v. City of Lowell*, Civil Action No. 87-0688-N, to take specific actions to address the City's alleged noncompliance with the secondary wastewater treatment, pretreatment, and CSOs requirements of its NPDES permit and the CWA, and to pay a \$180,000 penalty for alleged past noncompliance with the CWA (the "1988 Consent Decree");

WHEREAS, the 1988 Consent Decree acknowledged that the CSO remedial actions required in the decree, which included submission of a CSO Facilities Plan, were being taken "as *initial steps* toward bringing combined sewer overflows into compliance with the [Clean Water] Act..." [emphasis supplied], and it was understood that the City would likely need to take additional actions, in an iterative fashion, over a number of years, to achieve complete compliance;

WHEREAS, the City has taken various CSO remedial actions both in accordance with the 1988 Consent Decree and with subsequently issued administrative compliance orders issued under Section 309(a) of the CWA, 33 U.S.C. § 1362(7);

WHEREAS, the CSO remedial actions undertaken by the City have resulted in the reduction, but not total elimination, of discharges from the CSO outfalls specified in the Permit or from other unauthorized discharge points in the Collection System;

WHEREAS, Section 309(e) of the CWA, 33 U.S.C. § 1319(e), requires that, whenever the United States brings a civil enforcement action against a municipality under Section 309 of the CWA, the state in which the municipality is located shall be joined as a party;

WHEREAS, the Commonwealth, on behalf of the Massachusetts Department of Environmental Protection (“MassDEP”), has filed an assented-to motion to intervene as a plaintiff in the action brought by the United States and has filed a complaint that alleges that the City was, and is, in ongoing violation of the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53 (the “Massachusetts Act”), and provisions of both the Permit and the 2003 Small MS4 General Permit adopted as state permits under applicable federal and state law;

WHEREAS, the United States and the Commonwealth allege in their separate complaints that remaining discharges from the CSO outfalls and other unauthorized discharge points in the Collection System cause or contribute to violations of the Massachusetts Surface Water Quality Standards, 314 C.M.R. § 4.00, for fecal coliform or *Escherichia coli* bacteria in the Merrimack River, Concord River, and Beaver Brook, in violation of the Permit and the CWA;

WHEREAS, the Defendant submitted to EPA and MassDEP an Integrated Capital Plan (“2019 ICP”) dated December 2019, which included the City’s proposed plan for wastewater, drinking water, and stormwater capital and operational improvements, and which the City proposed would serve as a CSO Long Term Control Plan (“LTCP”) to address ongoing CSO and other unauthorized discharges from the City’s Collection System;

WHEREAS, EPA and MassDEP provided comments to, and requested additional information from, the City on the proposed 2019 ICP, but do not yet have information sufficient to adequately assess the proposed alternatives in the 2019 ICP to address the ongoing CSO discharges affecting the quality of the waters in the Merrimack River Watershed and, therefore, the CSO LTCP has not yet been approved;

WHEREAS, among other things, the 2019 ICP requires implementation of a sewer separation and green infrastructure project in the sewershed in the City associated with Tilden

Street by December 31, 2024;

WHEREAS, entry of this Consent Decree by the Court will resolve all civil claims in the complaint of the United States and the complaint of the Commonwealth (referred to herein jointly as the “Complaints”) as set forth in Section XV (Effect of Settlement/Reservation of Rights);

WHEREAS, by entering into this Consent Decree, the City does not admit any liability to the United States or the Commonwealth arising out of the occurrences alleged in the Complaints; and;

WHEREAS, the United States, the Commonwealth, and the City (referred to herein collectively as the “Parties”) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. STATEMENT OF CLAIM

1. The Complaints state claims upon which relief can be granted against the Defendant under Section 309 of the CWA, 33 U.S.C. § 1319, and, with respect to the Commonwealth’s complaint, pursuant to the Massachusetts Act, M.G.L. c. 21, § 42 and 46.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action under Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, 1355, and 1367. This Court has personal jurisdiction over the Parties to this Consent Decree. Venue properly lies in

this district under Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c). The City waives all objections it might have raised to such jurisdiction or venue.

III. APPLICABILITY

3. The provisions of this Consent Decree shall apply to and be binding upon the City and its officers, directors, agents, employees acting in their official capacities, its successors, and assigns.

4. No transfer of any ownership or operation of the wastewater treatment plant or Collection System, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of this Consent Decree are implemented, unless (1) the transferee agrees to undertake the obligations required by this Decree and to be substituted for the City as a Party under the Decree and thus be bound by its terms, and (2) the United States consents to relieve the City of its obligations.

5. The City shall provide a paper or electronic copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provisions of this Consent Decree, as well as to any contractor retained to perform work required under this Decree.

6. In an action to enforce this Consent Decree, the City shall not assert as a defense, except as provided in Section XI (Force Majeure), the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CWA or in regulations promulgated under the CWA shall have the

meaning ascribed to them in the CWA or in the regulations promulgated thereunder. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply.

- a. “Act” or “CWA” shall mean the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), as amended, 33 U.S.C. §§ 1251-1387.
- b. “Best Management Practices” or “BMPs” shall mean schedules of activities, practices, and prohibition of practices, structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control site and road runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- c. “Catchment” shall mean the geographical area served by and drained to a distinct portion of the City’s MS4.
- d. “Collection System” shall mean the wastewater collection, storage and transmission system (*a.k.a.* sanitary sewer system) owned or operated by the City, including, but not limited to, all devices, sewersheds, pump stations, force mains, gravity sewer lines, manholes, and appurtenances.
- e. “Combined Sewer Overflow” or “CSO” shall mean a discharge from the Combined Sewer System at a CSO outfall designated in the City’s 2020 NPDES Permit.
- f. “Commonwealth” shall mean the Commonwealth of Massachusetts.

- g. “Complaints” shall mean the complaints filed by the United States and the Commonwealth in this action.
- h. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.
- i. “Date of Lodging” shall mean the Day this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Massachusetts.
- j. “Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal or State holiday, the period shall run until the close of business of the next business day.
- k. “Effective Date” shall have the definition provided in Section XVII (Effective Date).
- l. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- m. “IDDE” shall mean illicit discharge, detection, and elimination where an illicit discharge is any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges covered by and in compliance with the City’s MS4 NPDES permit.
- n. “Lowell Regional Wastewater Utility or “LRWU” shall mean the wastewater treatment works owned and operated by the City, and located at 451 First

Street Boulevard, Lowell, Massachusetts and throughout the City, and all components of such wastewater treatment works.

- o. “Massachusetts Act” shall mean the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53.
- p. “MassDEP” shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the Commonwealth.
- q. “Municipal Separate Storm Sewer System” or “MS4” shall mean a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and/or operated by the City designed or used for collecting or, conveying stormwater, and discharging stormwater to receiving waters.
- r. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral, a lower-case letter, or a lower-case Roman numeral.
- s. “Parties” shall mean the United States, the Commonwealth, and the City of Lowell, Massachusetts.
- t. “Permit” shall mean NPDES Permit No. MA0100633, issued on June 29, 2020, or any subsequent, superseding, modified, or reissued permit.
- u. “Sanitary Sewer Overflow” or “SSO” shall mean any overflow, spill, diversion, or release of wastewater from, or caused by, the City’s Collection System. SSOs include, but are not limited to, discharges to waters of the United States from the City’s Collection System, as well as any release of wastewater from the City’s Collection System to public or private property

that does not reach waters of the United States, including wastewater backups onto public streets and Building/Private Property Backups. SSOs do not include overflows, spills, diversions, or releases on private property from systems or components that are not owned or operated by the City, and that are not caused by the City's Collection System. CSOs are deemed separate and distinct from SSOs.

- v. "Section" shall mean a portion of this Consent Decree identified by an upper case Roman numeral.
- w. "Sewershed" shall mean a major portion of the Collection System that drains to one, or a limited number of, Major Sewer(s), with "Major Sewers" being defined as 15 inches in diameter or greater.
- x. "United States" and "U.S." shall mean the United States of America.

V. OBJECTIVES

8. It is the express purpose of the Parties in entering into this Consent Decree to require the City to take measures necessary to achieve and maintain compliance with the CWA, the Massachusetts Act, the Permit, and any applicable Federal and State regulations.

9. All work pursuant to this Consent Decree shall be performed using sound engineering practices to ensure that construction, management, operation, and maintenance of the Collection System and Lowell Regional Wastewater Utility complies with the CWA, including practices to improve the resilience of the Collection System and wastewater treatment plant to the impacts of climate change. Engineering designs and analyses required to be performed pursuant to this Consent Decree shall be conducted using sound engineering practices, and, as may be applicable, shall be guided by: (a) EPA's "Handbook: Sewer System

Infrastructure Analysis and Rehabilitation,” EPA/625/6-91/030, October 1991, or as amended; (b) “Existing Sewer Evaluation and Rehabilitation,” WEF MOP FD-6, 2009, or as amended; (c) “Guide to Short Term Flow Surveys of Sewer Systems,” WRc Engineering (Undated); (d) the National Association of Sewer Service Companies’ “Manual of Practice”; (e) New England Interstate Water Pollution Control Commission’s TR-16 “Guides for the Design of Wastewater Treatment Works,” 2011, or currently effective edition; (f) EPA’s “Computer Tools for Sanitary Sewer System Capacity Analysis and Planning,” EPA/600/R-07/111, October 2007, or as amended; (g) EPA’s Climate Ready Water Utilities (CRWU) Initiative, referenced at EPA 817-F-12-005, November 2012; (h) EPA’s Climate Resilience Evaluation and Awareness Tool Version 2.0 (CREAT 2.0), referenced at EPA 817-F-12-011, December 2012; and (i) MassDEP’s May 2017 Guidelines for Performing Infiltration/Inflow Analyses and Sewer System Evaluation Surveys. Should there be a conflict between two or more of these sources, EPA’s and MassDEP’s written determination as to which source to follow shall control.

VI. REMEDIAL MEASURES

Combined Sewer Overflows (“CSOs”)

10. On or before December 31, 2023, the City shall submit to EPA and MassDEP for review and approval a Preliminary Design Report and Sewer Separation Implementation Schedule for the Humphrey’s Brook/Billings Brook drainage area (“Humphrey’s Brook PDR.”) The Humphrey’s Brook PDR shall detail the engineering approach to: carry out sewer separation in these areas; address infiltration and inflow into the collection system in these areas, including private sources; prioritize sewer separation based on CSO control benefits, cost, and construction challenges with the goal of sequencing the work to achieve the greatest CSO reduction benefits; and identify major technical and permitting issues. The Humphrey’s Brook PDR shall include

cost estimates for the recommended work, and shall specifically incorporate the following provisions:

- a. Conceptual design plans which will result in the separation of the sewer and storm drain system throughout the Humphrey's Brook/Billing's Brook drainage area;
- b. Phasing of the sewer separation work to achieve:
 - i. Removal of Humphrey's Brook flows from the City's combined sewer system, including surface flows from the Town of Dracut, by December 31, 2027; and
 - ii. Separation of the sewer and storm drain system in the Humphrey's Brook/Billing's Brook drainage area by December 31, 2031.
- c. Engineering design plans for each phase of the work shall be approved by MassDEP prior to commencing construction.

11. On or before December 31, 2024, the City shall submit to EPA and MassDEP for review and approval, a Phase 3 Preliminary Design Report and Sewer Separation Implementation Schedule ("Phase 3 PDR") for the Warren, Tilden, Merrimack, and Barrasford CSO subareas. The Phase 3 PDR shall build upon the system information developed by the City in past long-term CSO control plans and preliminary design reports, assess full and/or partial sewer separation in these CSO subareas, and prioritize successive phases of sewer separation in these basins based on CSO control benefits, cost, construction challenges and resolutions of City property backups and street flooding. The Phase 3 PDR shall specifically include:

- a. A recommended plan and implementation schedule, extending through 2034, which includes a design and construction schedule for further sewer separation work in the Phase 3 subareas, based on the assessment of the CSO control benefits, costs, and construction challenges.

- b. For the subareas identified for sewer separation work, the PDR will detail the engineering approach to: carry out sewer separation in these areas; address Infiltration and Inflow into the collection system in these areas, including, private sources; prioritize sewer separation based on CSO control benefits, cost, and construction challenges; and identify major technical and permitting issues.
- c. For the Wentworth/Douglas and Pevey Street Areas an overflow mitigation plan which shall include, at a minimum:
 - i. A detailed description and map of the tributary sewer and storm drain system contributing to surcharge conditions in the sewers and combined sewers at these locations.
 - ii. A summary of surcharge/overflow events at these locations dating back to January 1, 2010, identifying the cause of the surcharge/overflow events, and if an overflow occurred, the volume discharged, and any properties and receiving waters affected. Where a surcharge/overflow event was caused by a wet weather event, the data on the event (rainfall depth, duration, intensity) shall be provided, along with an estimate of the recurrence interval of the storm event.
 - iii. An assessment of the range of operational measures and capital improvements which are feasible to mitigate the risk and impacts of surcharge/overflow events at these locations.
 - iv. A recommended plan and schedule for actions to mitigate the risk and impacts of surcharge/overflow events at these locations.
- d. Engineering design plans for each phase of the work shall be approved by MassDEP prior to commencing construction.

12. On or before September 1, 2032, the City shall submit, for MassDEP and EPA approval, a scope of work for an Updated Long-Term CSO Control Plan (“Updated LTCP”). The scope of work shall be consistent with EPA’s CSO Control Policy and MassDEP’s Guidance for Abatement of Pollution from CSO Discharges, and shall also include a Public Participation

Plan sufficient to provide for ample opportunities for the public to be informed about the development of the Updated LTCP at critical junctures, and to have opportunities to provide informed comments on the Updated LTCP. The City shall begin implementing the work upon approval of the scope of work by EPA and MassDEP.

13. On or before September 1, 2034, the City shall submit, for MassDEP and EPA review and approval, the Updated LTCP. The Updated LTCP shall be developed in accordance with the approved scope of work, and shall include the following detailed elements:

- a. A summary of the sewer separation work completed above;
- b. Data on reductions of CSO activations and volumes, and water quality benefits achieved by the sewer separation work;
- c. An updated estimate of the CSO activations and volumes in a typical year, which shall be established through a review of historical and current rainfall data
- d. An updated description of the implementation of the Nine Minimum Controls and Capacity, Management, Operation, and Maintenance (CMOM) activities intended to minimize remaining CSO activations and their impacts;
- e. An updated financial capacity assessment;
- f. Development and assessment of a range of further CSO control alternatives, up to and including elimination of CSO discharges;
- g. A recommended plan and implementation schedule for further CSO controls, which shall identify any and all CSO controls which takes into consideration EPA and MassDEP comments on appropriate CSO controls necessary to meet

the requirements of the Clean Water Act and state water quality standards to be approved by EPA and MassDEP; and

- h. A post construction compliance monitoring plan to evaluate the effectiveness of CSO controls and to verify compliance with the CSO specific performance criteria as presented in the approved Long Term Control Plan Update

Update Capacity Management, Operation and Maintenance (“CMOM”) Program

14. On December 30, 2022, the City submitted an updated CMOM Program Assessment of the City’s operation and maintenance practices (the "CMOM Program Self-Assessment") for review and comment to EPA and MassDEP. The City identified improvements to the City’s preventive maintenance practices that are necessary to preserve the infrastructure of the Collection System and to prevent future unauthorized discharges from the Collection System. The CMOM Program Self-Assessment shall be conducted in accordance with EPA’s Guide for Evaluating CMOM Programs at Sanitary Sewer Collection Systems (EPA 305-B-05-002, January 2005), which is available on-line at http://www.epa.gov/npdes/pubs/cmom_guide_for_collection_systems.pdf. As part of the CMOM Program Assessment, the City shall also complete and submit the Wastewater Collection System CMOM Program Assessment Checklist (“CMOM Program Self-Assessment Checklist”), appendix A to this Consent Decree. The CMOM Program Self-Assessment shall also specifically evaluate collection system improvements or operational measures which will reduce the risk of surcharge/overflow events, and resultant public health risks at/near areas with recurring backup events, including at a minimum, the following areas: Raven/River Road, Eagle Court (The Lowell Boys and Girls Club), Winward Road, Marginal Street, Bishop Street, and an assessment of the Chelmsford Pump Station.

15. Within 120 days from receipt of EPA and MassDEP written comments on the CMOM Program Self-Assessment, the City shall complete and submit a CMOM Corrective Action Plan (the “CMOM CAP”) for review and approval by EPA and MassDEP. The City shall immediately and continuously implement the CMOM CAP, as approved by EPA and MassDEP.

16. The CMOM CAP shall, at a minimum, include the following:

- a. A list of any action items identified by the CMOM Program Self- Assessment.
- b. A plan for any measures needed to reduce the risk of surcharge/overflow events and resultant public health risks at/near areas with recurring backup events, including at a minimum, the following areas: Raven/River Road, Eagle Court (The Lowell Boys and Girls Club), Winward Road, Marginal Street, Bishop Street, and an assessment of the Chelmsford Pump Station; Merrimack Street, and Bishop Street;
- c. A list of causes and contributing factors leading to unauthorized discharges;
- d. A description of the specific short and long-term actions that the City is taking, or plans to take, to address any of the deficiencies identified during the completion of the CMOM Program Self-Assessment Checklist; and
- e. A schedule for implementation of the CMOM CAP (the “CMOM CAP Implementation Schedule”) which, upon approval by MassDEP and EPA, shall be incorporated into this Consent Decree.

17. Beginning April 30, 2023, and each April 30th annually thereafter, the City shall submit a CMOM Program Implementation Annual Report (the “CMOM Annual Report”) to EPA and MassDEP detailing the actions taken by the City during the prior calendar year, or known by the City to have been taken by other parties, to resolve the deficiencies identified in

the CMOM CAP and to comply with the Consent Decree. This report may be submitted as part of the annual CSO report submitted annually by April 30th as required by the City's NPDES Permit. The CMOM Program Annual Report shall also include:

- a. A summary, in table form, listing all overflows, spills, and releases that occurred during the previous calendar year, including building/private property backups that resulted from capacity limitations, blockages, vandalism, and mechanical, electrical, and structural failures in that portion of the collection system owned by the City. The tabular listing shall be organized chronologically and shall include:
 - i. the dates and times that each event began (if uncertain, then the City's best estimate) and was stopped, or if it is continuing, a schedule for its termination;
 - ii. the location (nearest address) of each such event;
 - iii. the source of the notification to the City;
 - iv. the cause of the event including, but not limited to, whether it was caused by debris, fats, oils, grease, root blockages, collapsed pipes, mechanical, electrical and structural failures, hydraulic overloads and/or vandalism;
 - v. the estimated gallons of wastewater released and the method used to estimate the volume;
 - vi. a clear statement of whether the release did or did not reach a stormwater catch basin or any other portion of the City's MS4. If the release occurred to the ground or street, regardless of whether the discharge reached any portion of the City's MS4, the City shall provide the distance to the nearest down gradient stormwater catch basin and the name of the receiving water to which the catch basin discharges;
 - vii. a clear statement of whether the release did or did not reach any surface water. If the release reached a surface water, the City shall include the name of the surface water and a description of the exact location where the release reached the surface water;

- viii. the estimated gallons of wastewater discharged to the MS4 or surface water and the method used to estimate the volume;
 - ix. the measures taken to stop the overflow, spill, or release and prevent future overflows, spills, and releases at the same location;
 - x. the date that the event was reported to EPA and MassDEP;
 - xi. the date of the last event that occurred at the same location; and
 - xii. the location of each event included in the summary listing shall also be noted on a map of the City's collection system.
- b. A description of the measures and programs implemented by the City to resolve any of the deficiencies identified in the CMOM CAP to reduce the frequency, duration and volume of overflows, spills, and releases from the City's Collection System during the previous calendar year including copies of any contracts signed by the City to address any issues identified in the CMOM Action Plan. The report shall also include a description of the activities that the City has implemented to measure the effect and success of its efforts.
- c. A description of the City's Collection System mapping system (e.g. GIS, paper) and the date maps were last updated.
- d. A copy of the annual Collection System operation and maintenance budgets, and organizational chart showing the staffing for the current fiscal year noting the source of the funding (whether enterprise fund or general tax rate). The City should notify EPA and MassDEP if it establishes a capital replacement fund ("sinking fund") to provide for replacement of aging wastewater Collection System infrastructure.

- e. A description of the specific measures that were taken by the City under the programs designed to reduce the levels of extraneous flows that enter the City's Collection System during the past calendar year including whether private properties are inspected during the property transfer process to determine whether infiltration/inflow sources are tied into the Collection System. A description of the City's easement maintenance program and the number of lost or buried manholes that remain in the Collection System, and the specific measures that were taken by the City under this program during the past calendar year; and
- f. The measures that will be taken during the current calendar year to resolve any deficiencies identified in the CMOM CAP.

Infiltration/Inflow ("I/I")

18. The City shall develop and implement an ongoing program to identify and remove infiltration and inflow from the sewer system in accordance with 314 C.M.R. §12.04(2) and shall provide annual flow information for those communities serviced by the LRWU. To meet this requirement, the City shall:

- a. By January 31, 2024, submit to MassDEP for review and approval an I/I Analysis Report. The I/I Analysis Report shall be consistent with the provisions of 314 C.M.R. § 12.04(2) and, as referenced therein, the MassDEP's 2017 *Guidelines for Performing Infiltration/Inflow Analyses and Sewer System Evaluation Surveys*, and shall include a detailed assessment of flow data gathered from the 2023 sewer metering program. The I/I Analysis Report shall also include an implementation schedule, based on assessment of

the flow data, for proceeding with sewer system evaluation surveys, and actions to address sources of Infiltration and Inflow; and

- b. Implement a program to mitigate impacts of any new connections or extensions to the sewer system with design flows exceeding 15,000 gallons per day, by requiring that four gallons of infiltration and/or inflow be removed for each gallon of new flow to be generated by the new sewer connection or extension, unless otherwise approved by DEP, as required by 314 C.M.R. § 12.04(2)(d).

19. Each year, by April 30, beginning in 2023, the City shall provide flow data and analysis of flows at the LRWU treatment facility, and flows received from the Towns of Tewksbury, Tyngsborough, Chelmsford, and Dracut for the prior calendar year. Information provided, for LRWU and the communities, shall include estimates of average daily flows; peak day flows; peak monthly (average) flows; and a breakdown of average daily infiltration and inflow, based on engineering analysis of flow data.

High Flow Management Plan

20. On April 30, 2023, the City submitted to EPA and MassDEP for review and approval, an Updated High Flow Management Plan (“HFMP”). The HFMP included a detailed assessment of the wastewater treatment plant, intended to maximize and optimize the use of plant unit operations in order to provide the highest feasible level of wastewater treatment under high flow conditions, and specifically includes:

- a. Standard operating procedures to be utilized in preparation for predicted storm, snow melt, and high river flow events likely to cause high flow conditions, including actions to preemptively ensure that unit operations are in

favorable condition to maximize treatment capacity, and where needed, provisions for higher levels of staffing;

- b. An evaluation of the maximum flow that can be provided full secondary treatment, consistent with applicable effluent limitations and conditions, by the LRWU, using a State Point Analysis and other engineering approaches, as appropriate;
- c. An evaluation of the maximum flow that can be provided at least primary treatment and disinfection by the LRWU;
- d. Reporting procedures to provide details on secondary bypass events at the wastewater treatment plant, which must include: notification via email to MassDEP and EPA as provided in the notice requirements in the Consent Decree of a secondary bypass event within 2 hours of diverting flow around secondary treatment, per 314 CMR §16.00.; a detailed report to be submitted to MassDEP and EPA within 5 days of the event, per 314 CMR §12.00, which shall include rainfall, volume of flow bypassing secondary treatment, and a description of any unit operations of the treatment works not in service, or only partially in service, during the bypass event; and compliance with all other notification and reporting requirements for partially treated wastewater under 314 CMR §16.00, consistent with the City's approved preliminary and final CSO Public Notification Plans; and
- e. Facility management procedures, including for the LRWU, collection system, and CSO outfalls, to maximize the flow reaching the LRWU, maximize the

in-line storage within the collection system, and minimize the volume of discharges through CSO outfalls.

- f. The City's Updated April 30, 2023, HFMP was approved by EPA and MassDEP by letter dated September 28, 2023. The City shall implement the approved plan, which is hereby incorporated into, and an enforceable element of this Consent Decree.

Municipal Separate Storm Sewer System Ordinances

21. As expeditiously as possible but no later than March 31, 2024, the City shall develop and make effective an Illicit Discharge Detection and Elimination ("IDDE") ordinance or other regulatory mechanism to effectively prohibit non-stormwater discharges to its MS4 and implement appropriate enforcement procedures and actions.

22. As expeditiously as possible but no later than March 31, 2024, the City shall develop and make effective an ordinance to require sediment and erosion control at construction sites.

23. As expeditiously as possible but no later than March 31, 2024, the City shall develop and make effective an ordinance to address post-construction runoff from new development and redevelopment.

Illicit Discharge Detection and Elimination

24. The City shall implement the updated IDDE program upon approval by EPA. As part of that program, the City will inspect and sample its MS4 outfalls, and MS4 discharges to other municipalities' MS4s or non-City owned outfalls, in accordance with the requirements

below. The City shall utilize the following IDDE screening thresholds as guidelines for its analysis of the data generated for each field sample to include:

The City shall implement its IDDE Program as submitted to USEPA and MADEP on December 31, 2022. The City will also submit a further update by December 31, 2023, consistent with the requirements below. The City shall implement the updated IDDE program upon approval by EPA. As part of that program, the City shall inspect and sample its MS4 outfalls, and MS4 discharges to other municipalities' MS4s or non-City owned outfalls, in accordance with the requirements below. The City shall utilize the following IDDE screening thresholds as guidelines for its analysis of the data generated for each field sample to include:

- Bacteria: Class A or B waters – *E. coli*: equal to or greater than 410 colony forming units /100 milliliters (“cfu/100 ml”) and/or *Enterococcus*: equal to or greater than 130 cfu/100 ml
- Surfactants: equal to or greater than 0.25 milligrams per liter (“mg/l”) via field kits or 0.1 mg/l via laboratory analysis
- Ammonia: equal to or greater than 0.5 mg/l via field kits or 0.1 mg/l via laboratory analysis
- Chlorine: equal to or greater than 0.02 mg/l

25. The following indicators, i.e., subparagraphs a. through e., shall constitute the detection of what shall hereby be referred to as a “Potential Illicit Discharge” and shall be used to prioritize the investigation of the catchment areas associated with the outfalls and interconnections:

- a. outfalls identified by EPA in sampling results previously supplied to Lowell on October 23, 2019 and October 29, 2020 based on analytical testing, such as EPA’s testing for pharmaceuticals and personal care products (“PPCPs”);
- b. olfactory or visual evidence of sewage;

- c. an exceedance of a bacterial threshold concurrent with exceeding both the surfactant and ammonia threshold;
- d. an exceedance of both the surfactant and ammonia thresholds concurrent with any detectable level of chlorine; and,
- e. an exceedance of a bacterial threshold concurrent with any detectable level of ammonia below its threshold.

An exceedance of a bacterial threshold specified in paragraph 24 above without meeting an indicator described in subparagraphs a., b., c., d., or e. above, may also indicate an illicit discharge that shall, at a minimum, be addressed by “Best Management Practices” as specified in the Consent Decree.

26. On January 16, 2023, the City submitted to MassDEP for review and to EPA for review and approval an IDDE Plan. On April 18, 2023, EPA provided comments to the City on the IDDE Plan. The IDDE Plan shall include screening and monitoring of all known MS4 outfalls and interconnections in both dry weather (as defined in the Consent Decree) and wet weather (as defined in the Consent Decree) conditions, investigation of all catchment areas, and identification and removal of illicit discharges, consistent with the schedule set forth in the IDDE plan. The IDDE Plan shall be consistent with EPA Region 1’s “EPA New England Bacterial Source Tracking Protocol,” January 2012 Draft. The City shall further update the IDDE Plan, as needed, to ensure consistency with any requirements in future NPDES Permits issued to the City. The City shall utilize the screening thresholds listed in the Consent Decree to prioritize all MS4 drainage catchment areas for IDDE investigations. The IDDE Plan shall include:

- a. The current MS4 Catchment area map showing boundaries of each Catchment area and associated outfall or interconnection;

- b. Identification of all combined manholes within these catchment areas;
- c. A schedule to inspect the identified combined manholes;
- d. A schedule to repair or eliminate the identified combined manholes; and
- e. A prioritization of all Catchment areas based on information and data

available, including EPA monitoring results (previously provided to the City), City monitoring results, applicable Total Maximum Daily Loads for impaired waterbodies on the applicable EPA-approved Massachusetts CWA § 303(d) integrated List of Waters, and a schedule for completion of Catchment area investigations.

27. The City shall use the following criteria when conducting dry-weather inspections: under dry-weather conditions (less than 0.1 inches of rain in the preceding 24 hours (but 48 hours when possible) and no significant snowmelt), the City shall inspect all MS4 outfalls and interconnections to other MS4s and sample those with flow. Each outfall and interconnection discharge sample shall be concurrently analyzed for all of the following parameters: E. coli bacteria, surfactants, ammonia, total residual chlorine, temperature, conductivity, and salinity using laboratory analysis or instrumentation defined in Tables 1 and 2 of EPA Region 1's "EPA New England Bacterial Source Tracking Protocol," January 2012 Draft. See: <https://www3.epa.gov/region1/npdes/stormwater/ma/2014AppendixI.pdf> The City shall maintain detailed and accurate records of the date and time that sampling was conducted and the weather conditions both during, and in the 48 hours prior to, each sampling event.

28. The City shall use these criteria when conducting wet-weather inspections: By June 15, 2031, the City shall inspect and sample all MS4 outfalls and interconnections to other MS4s. For the purposes of sampling outfalls or interconnections, "wet-weather conditions" should consist of at least 0.25-inches of rain over the 24-hour period prior to sampling. To

facilitate sample planning and execution, however, precipitation events sufficient to produce any flow in outfalls or interconnections to be sampled will also be acceptable. Each outfall or interconnection discharge samples shall be concurrently analyzed for all of the following parameters: *E. coli* bacteria, surfactants, ammonia, total residual chlorine, temperature, conductivity, and salinity, using laboratory analysis or instrumentation defined in Tables 1 and 2 of EPA Region 1's "EPA New England Bacterial Source Tracking Protocol," January 2012 Draft. The City shall maintain detailed and accurate records of the date and time that sampling was conducted and the weather conditions both during, and in the 24 hours prior to, each sampling event.

29. Illicit discharge removal and abatement: For purposes of the Consent Decree, the "date of verification" of an illicit discharge shall be the date on which the City has identified a point of entry of an Illicit Discharge from a specific location or address that contributes flow to the MS4. This program shall contain the following for removal of illicit discharges and confirmation of elimination:

- a. Upon detection of a Potential Illicit Discharge, the City shall locate, identify and eliminate the illicit discharge as expeditiously as possible. Upon identification of the illicit source, the City shall notify all responsible parties for any such discharge and require immediate cessation of improper disposal practices in accordance with its legal authorities. Where elimination of a direct-plumbed source(s) of an illicit discharge within 60 Days of its identification as the source is not possible, the City shall establish an expeditious schedule, not to exceed one year, for its elimination by the City. If elimination of other identified source(s) (including indirect source(s)) of an

illicit discharge within 60 Days of its identification as the source is not possible, the City shall establish an expeditious schedule, not to exceed three years, for its elimination. Discharges from the MS4 that are mixed with an illicit discharge are not authorized and remain unlawful until eliminated;

- b. Within one year following the removal of a verified illicit discharge, the City shall conduct additional dry- and wet-weather monitoring to confirm that the illicit discharge has been eliminated. If confirmatory screening indicates evidence of a continued Potential Illicit Discharge, the Catchment shall be scheduled for additional investigation and illicit discharge removal. In the event EPA informs the City that illicit discharges have not been eliminated from a particular outfall, based upon City data or EPA data (including EPA's PPCP data), the Catchment shall be scheduled for additional investigation and illicit discharge removal; and
- c. Combined Manholes: If it is found that a combined manhole(s) is contributing to contamination within the MS4 the City shall establish an expeditious schedule for its elimination, and report the dates of identification and schedules for removal in the City's Compliance Report. For combined manhole(s) that are overflowing multiple times within one year or are contributing significant contamination to the MS4, the City shall eliminate such combined manhole(s) within one year of such discovery.

30. Upon approval by EPA, the IDDE Plan shall be incorporated into and becomes enforceable under this Consent Decree and the City shall implement the IDDE Plan, as approved by EPA, in accordance with the schedule set forth therein.

31. The City shall provide information relating to implementation of its IDDE Plan semi-annually in the compliance report required by the Consent Decree.

Best Management Practices (BMPs)

32. The City shall include BMPs as defined in the Consent Decree to minimize to the maximum extent practicable and/or eliminate sources of pollutants. Where the City's IDDE investigation identifies a source of Illicit Discharge of pollutants to the City's MS4 whose elimination requires implementation of BMPs, the City shall include recommendations for implementing Green Infrastructure ("GI")/Low Impact Development ("LID") BMPs to address the MS4 pollutant discharge. Where GI/LID BMPs are not recommended for implementation, the City shall provide a reason why such GI/LID BMP implementation is not being recommended for each particular location and shall include such explanation in the compliance reports required under the consent decree.

Measures to Minimize Phosphorus in Stormwater

33. The City shall identify and implement BMPs designed to reduce phosphorus discharges to waterbodies, or their tributaries, that are listed as impaired for phosphorus on the applicable EPA-approved Massachusetts CWA § 303(d) Integrated List of Waters and do not have an EPA approved Total Maximum Daily Load. To address phosphorus discharges the City shall comply with the following requirements:

- a. The City submitted its SWMP on January 16, 2023. The City shall update its SWMP by December 31, 2023 to incorporate the requirements of this section and document the date of SWMP update.
- b. Additional or Enhanced BMPs:

- i. The City shall distribute an annual message in the spring (March/April) timeframe that encourages the proper use and disposal of grass clippings and encourages the proper use of slow-release and phosphorous-free fertilizers. The City shall distribute an annual message in the summer (June/July) timeframe encouraging the proper management of pet waste, including noting any existing ordinances where appropriate. The City shall distribute an annual message in the fall (August/September/October) timeframe encouraging the proper disposal of leaf litter. The City shall deliver an annual message on each of these topics, unless the City determines that one or more of these issues is not a significant contributor of phosphorous to discharges from the MS4 and retains documentation of this finding in the SWMP;
 - ii. Stormwater Management in New Development and Redevelopment: the requirement for adoption/amendment of the permittee's ordinance or other regulatory mechanism shall include a requirement that new development and redevelopment stormwater management BMPs be optimized for phosphorus removal; and
 - iii. Good House Keeping and Pollution Prevention for Permittee Owned Operations: The City shall establish procedures to properly manage grass cuttings and leaf litter on City property, including prohibiting blowing organic waste materials onto adjacent impervious surfaces; increased street sweeping frequency of all municipal owned streets and parking lots (with the exception of rural uncurbed roads with no catch basins or high speed limited access highways) to a minimum of two times per year, once in the spring (following winter activities such as sanding) and at least once in the fall (Sept 1 – Dec 1; following leaf fall).
- c. Phosphorus Source Identification Report
- i. By December 31, 2025, the City shall complete a Phosphorus Source Identification Report. The report shall include the following elements: (1) Calculation of total MS4 area draining to the water quality limited receiving water segments or their tributaries, incorporating updated mapping of the MS4 and catchment delineations, (2) All screening and monitoring results targeting the receiving water segment(s), (3) Impervious area and directly connected impervious area (DCIA) for the target catchment, (4) Identification, delineation and prioritization of potential catchments with high phosphorus loading, and (5) Identification of potential retrofit opportunities or opportunities for the installation of structural BMPs during redevelopment, including the removal of impervious area.

- ii. The phosphorus source identification report shall be submitted to EPA in the January 31, 2026 Compliance Report.
- d. Potential Structural BMPs
- i. By December 31, 2026, the City shall evaluate all permittee-owned properties or those identified in the Phosphorus Source Identification Report that could potentially be modified or retrofitted with BMPs designed to reduce stormwater discharges to and from its MS4. The evaluation shall include: (a) the next planned infrastructure, resurfacing or redevelopment activity planned for the property (if applicable) or planned retrofit date; (b) the estimated cost of redevelopment or retrofit BMPs; and (3) the engineering and regulatory feasibility of redevelopment or retrofit BMPs.
 - ii. The City shall provide a listing of planned structural BMPs and a plan and schedule for implementation in the January 31, 2027 Compliance Report. The permittee shall plan and install a minimum of one structural BMP as a demonstration project within the drainage area of the water quality limited water or its tributaries by December 31, 2027. The demonstration project shall be installed targeting a catchment with high phosphorus load potential. The City shall install the remainder of the structural BMPs in accordance with the plan and schedule provided in the January 31, 2027 Compliance Report.
 - iii. Any structural BMPs installed by the City shall be tracked and the City shall estimate the phosphorus removal by the BMP. The City shall document the BMP type, total area treated by the BMP, the design storage volume of the BMP and the estimated phosphorus removed in mass per year by the BMP in each annual Compliance Report required by the consent decree.

Geographic Information System Maps

34. On August 31, 2022, the City submitted to EPA and MassDEP in electronic format the current version of the City's stormwater collection system and wastewater collection system geographic information system (GIS) map.

35. By September 30, 2024, the City shall update and submit to EPA and MassDEP in electronic format an updated version of the City's stormwater collection system GIS map to include the following information:

- a. Outfalls and receiving waters;
- b. Open channel conveyances;
- c. Interconnections with other MS4s and other storm sewer systems;
- d. Municipally-owned stormwater treatment structures;
- e. Waterbodies identified by name and indication of all use impairments; and
- f. Initial catchment delineations identifying the area that drains to each

individual outfall or interconnection.

36. By April 30, 2024, and on each April 30th thereafter, the City shall submit to EPA for review updated maps reflecting newly developed and/or discovered information, corrections, and modifications in conjunction with the compliance reporting required by this Consent Decree. Such mapping shall be designed to provide a comprehensive depiction of key infrastructure and factors influencing the proper operation and maintenance of the City's Collection System and MS4, and each update shall include progress toward achieving that design. Mapping shall include: water resource and topographic features; sanitary and stormwater sewer infrastructure; prior investigation and study findings; cleaning and repair activities; and capital projects. The scale and detail of the maps shall be appropriate to facilitate a clear understanding of the City's Collection System and MS4 by the City, EPA, and MassDEP. In addition, the mapping shall serve as a planning tool for the implementation of future remedial measures, shall delineate the extent of completed and planned investigations and corrections, and shall include other related capital projects. To ensure legible mapping, information shall be grouped appropriately and represented thematically (*e.g.*, by color coding) with legends or schedules where possible. Mapping shall be updated as necessary to reflect newly developed and discovered information,

corrections, or modifications. The following information and features shall, at a minimum, be included in the mapping:

- a. Base Map
 - i. Municipal boundaries;
 - ii. Street names; and
 - iii. Private property delineations;
- b. Water Resources and Topographic Features
 - i. Water bodies and watercourses identified by name and all use impairments identified in Massachusetts' most recent Integrated List of Waters prepared to fulfill reporting requirements of Section 303(d) of the Clean Water Act; and
 - ii. Topography;
- c. Infrastructure
 - i. MS4:
 - (1) Outfalls;
 - (2) Pipes (including size and material);
 - (3) Open channel conveyances (*e.g.*, swales, ditches);
 - (4) Catch basins;
 - (5) Manholes;
 - (6) Inter-municipal connections;
 - (7) Municipally-owned stormwater treatment structures (*e.g.*, detention and retention basins, infiltration systems, bioretention areas, water quality swales, gross particle separators, oil/water separators, and other proprietary systems); and
 - (8) Delineation of Catchment areas for each outfall;
 - ii. Collection System:
 - (1) Pipes (including size, material, and approximate age);
 - (2) Flow type (*e.g.*, pressure, vacuum, gravity);
 - (3) Manholes;
 - (4) Pump stations (public and private), and other key sewer Appurtenances;
 - (5) Locations of interceptor sewers;
 - (6) Delineation of Sewershed areas for each connection to the interceptor sewer:

- (7) Sewersheds or sewer alignments experiencing inadequate level of service (with indication of reason(s));
 - (8) Common/twin-invert manholes or structures (i.e., structures serving or housing both separate storm and sanitary sewers);
 - (9) Collection System alignments served by known or suspected underdrain systems; and
 - (10) Sewer alignments with common trench construction and major crossings representing high potential for communication during high groundwater conditions;
- iii. Investigations, remediation, and capital projects completed for the City's MS4 and Collection System in accordance with this Consent Decree, including:
- (1) Alignments, dates, and thematic representation of work completed (with legend) of past investigations (e.g., flow isolation, dye testing, closed-circuit television, etc.);
 - (2) Locations of suspected, confirmed, and eliminated illicit discharges (with dates and flow estimates) to the City's MS4;
 - (3) Alignments and dates of past and planned infrastructure remediation projects; and
 - (4) Planned Collection System and MS4 capital projects; and
 - (5) Proposed phasing of future capital projects.

SSO and CSO Reporting Requirements

37. The City shall comply with the reporting requirements for SSOs found at 314 C.M.R. § 12.03(8) (Operation, Maintenance and Pretreatment Standards for Wastewater Treatment Works and Industrial Dischargers) which states:

- a. Persons owning or operating a sewer system shall report bypasses and/or overflows as follows:
 - i. In the event of an anticipated bypass or sanitary sewer overflow, the owner or operator shall provide notification to the MassDEP on a form approved by the MassDEP, at least ten days prior to the event, if possible;
 - ii. In the event of an unanticipated bypass or sanitary sewer overflow, as soon as the owner or operator has knowledge of the bypass or sanitary sewer overflow but in no event later than 24 hours after its first occurrence, the owner or operator shall provide notification to the MassDEP, on a form approved by the MassDEP, of such an event; and

- iii. Within five days of either 314 C.M.R. § 12.03(8)(a) or (b), the owner or operator shall provide the following information to the MassDEP, on a form approved by the MassDEP: all the activities that led up to the event; steps taken to minimize the impact of the event on public health, safety and the environment; and, steps taken to prevent such an event from happening in the future.

All notices provided to MassDEP under this paragraph shall also be provided to EPA.

38. The City shall start reporting SSOs and CSOs under the Electronic Reporting Rule found at 40 CFR § 122.63(f) within the time-period specified by EPA following EPA's notice to the City that such reporting has become available for use under an electronic reporting system for facilities in Massachusetts.

39. MassDEP has finalized rules at 314 C.M.R. § 16.00 entitled "Notification Requirements to Promote Public Awareness of Sewage Pollution," effective as of January 21, 2022. These rules require notification and reporting for all CSOs and specific types of SSOs, as described in 314 C.M.R. § 16.03(1). Consistent with the City's approved preliminary and final CSO Public Notification Plans, the City shall comply with all requirements for notifications and reporting for CSOs and SSOs that are subject to 314 CMR § 16.00, including but not limited to, issuance of public advisory notifications within 2 hours of the discovery of the CSO or SSO, posting public advisory notifications to the City's website, and reporting into MassDEP's online data system. All notifications provided to MassDEP under 314 C.M.R. § 16.00 shall also be provided to EPA.

VII. REPORTS ON COMPLIANCE

40. Until otherwise directed in writing by EPA, the City shall submit by April 30 and October 31 of each year for review by EPA and MassDEP Compliance Reports for the previous six-month period (April 1 through September 30, and October 1 through March 31) ("Reporting

Period”) regarding its progress in implementing the remedial measures and other provisions of the Consent Decree. Each Compliance Report shall include, at a minimum:

- a. A description of activities undertaken during the Reporting Period directed at achieving compliance with the Consent Decree;
- b. Identification of all plans, reports, and other deliverables required by the Consent Decree that have been completed and submitted during the Reporting Period; and
- c. A description of the expected activities to be taken during the next Reporting Period in order to achieve compliance with the Consent Decree.

In addition, the technical staff at EPA, the MassDEP, and the City will arrange to meet in person or remotely following the City’s submission of the April 30 report to review the City’s compliance with the terms of the Consent Decree.

The reporting requirements set forth in this Section do not relieve the City of its obligation to submit any other reports or information as required by Federal, State or local law or regulation. EPA reserves the right to review and require modifications to the above reporting requirements.

Maintenance of Website

41. The City shall establish and maintain a public website to provide a means for interested parties to access and view deliverables and modifications to deliverables under the Consent Decree, including, at a minimum (as may be redacted for security purposes):

- a. Preliminary Design Report and Sewer Separation Implementation Plan;
- b. Scope of Work for an updated LTCP including a Public Participation Plan;
- c. CSO Control Plan Update;

- d. CMOM Program Assessment;
- e. CMOM Corrective Action Plan;
- f. Infiltration/Inflow Abatement Plan;
- g. High Flow Management Plan;
- h. Illicit Discharge Detection and Elimination Plan;
- i. CSO/SSO reporting information as required under 314 CMR 16.05;
- j. Semi-Annual Compliance Reports; and
- k. Any other submissions required to be submitted by this Consent Decree.

VIII. APPROVAL OF SUBMISSIONS

42. After review of any plan, schedule, report, or other item that is required to be submitted for approval by EPA and/or MassDEP pursuant to this Consent Decree, EPA and/or MassDEP, as appropriate, shall in writing: (a) approve, in whole or in part, the submission; (b) approve, in whole or in part, the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

43. If EPA and/or MassDEP, as appropriate, approves the submission pursuant to the previous Paragraph, the plan, report or other document shall be incorporated into this Consent Decree and fully enforceable hereunder and 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 EPA and/or MassDEP, as appropriate, provides conditional approval or approval only in part pursuant to the previous Paragraph, the City shall, upon written direction from EPA and/or MassDEP, as appropriate, take all actions required by the approved plan, report, or other item that EPA and/or MassDEP, as appropriate, 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 XII (Dispute Resolution). Such conditionally approved or approved in part plan, report, or other document shall be incorporated into this Consent Decree and fully enforceable hereunder.

44. If EPA and/or MassDEP, as appropriate, disapproves the submission in whole or in part pursuant to Paragraph 42, 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.

45. If EPA and/or MassDEP, as appropriate, disapproves in whole or in part a resubmitted plan, report, or other item, or portion thereof, EPA and/or MassDEP, as appropriate, may again require the City to correct any deficiencies, in accordance with this Paragraph, or may itself correct any deficiencies subject to the City's right to invoke Dispute Resolution under Section XII and the right of EPA and/or MassDEP, as appropriate, to stipulated penalties as provided Section IX.

46. If the City elects to invoke Dispute Resolution as set forth in Section XII, the City shall do so by sending a Notice of Dispute in accordance with that Section within 30 Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

IX. STIPULATED PENALTIES

47. The Defendant shall pay stipulated penalties to the United States and the Commonwealth for violations or noncompliance with the requirements of this Consent Decree, as set forth below, unless excused under Section XI (Force Majeure). A violation or noncompliance includes failing to perform an obligation required by the terms of this Consent

Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules or by the date(s) established by or approved under this Decree:

48. Reporting and Monitoring Requirements. For every Day that the Defendant fails timely to submit a report required by Section VII (Reports on Compliance), or fails to provide the certification required in Section XIV (Form of Notice), the Defendant shall pay a stipulated penalty as follows:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 750	1st through 10th Day
\$ 1,500	11th through 20th Day
\$ 2,500	21st Day and beyond.

49. Remedial Measures. For every Day that the Defendant fails to timely meet the requirements of Section VI (Remedial Measures) of this Consent Decree, including but not limited to, submitting an approvable plan, schedule, report, or other item, other than a report required by Section VII (Reports on Compliance) or fails to implement remedial requirements in a plan, schedule, report, or other item Approved by EPA and/or MassDEP, the Defendant shall pay a stipulated penalty as follows:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 1,500	1st through 10th Day
\$ 3,000	11th through 20th Day
\$ 5,000	21st Day and beyond.

50. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations that have occurred prior to the Effective Date, 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.

51. Stipulated penalties shall continue to accrue under this Section during any Dispute Resolution under Section XII, but need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, the City shall pay accrued penalties determined to be owing, together with interest, to the United States and the Commonwealth within 30 Days of the effective date of the agreement or the receipt of EPA's and/or MassDEP's, as appropriate, decision or order.
- b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the 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 the Defendant appeals the District Court's decision, the Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving payment instructions from the Plaintiffs following the final appellate court decision.

52. If the Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, the Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961 ("Interest"), accruing as of the date payment became due.

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

54. Accrual of Penalties. Stipulated penalties accrue from the Day performance is due, or the day a noncompliance occurs, whichever is applicable, until the Day the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Decree prevents the simultaneous accrual of separate penalties for separate violations of this Decree. Stipulated penalties accrue regardless of whether the Defendant has been notified of its noncompliance, and regardless of whether the Defendant has initiated Dispute Resolution under Section XII, provided, however, that no penalties will accrue as follows:

- a. With respect to a submission that EPA and/or MassDEP, as appropriate, subsequently determines is deficient under Section VIII (Approval of Submissions), during the period, if any, beginning on the 31st day after EPA's and/or MassDEP's, as appropriate, receipt of such submission until the date that EPA notifies the Defendant of any deficiency.
- b. With respect to a matter that is the subject of Dispute Resolution under Section XII, during the period, if any, beginning on the 21st day after the later of the date that EPA's and/or MassDEP's, as appropriate, Statement of Position is received or the date that the Defendant's reply thereto (if any) is received until the date of the Formal Decision under Paragraphs 72-73.
- c. With respect to a matter that is the subject of judicial review by the Court under Paragraphs 74, during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

55. Demand and Payment of Stipulated Penalties. EPA or the Commonwealth or both may send the Defendant a demand for stipulated penalties. Where both sovereigns elect to

seek stipulated penalties for any violation of this Consent Decree, any such penalties determined to be owing shall be paid fifty percent (50%) to the United States and fifty percent (50%) to the Commonwealth. Where one sovereign elects to seek such stipulated penalties, and the other sovereign does not join in the demand within 15 Days of its receipt, timely joins in the demand as to only some of the violations in question, or timely joins in the demand but subsequently elects to waive stipulated penalties as to any or all of the violations in question, the entire amount of the stipulated penalties determined to be owing for each violation as to which only one sovereign has sought stipulated penalties shall be payable to the sovereign making the demand. Where one sovereign reduces the stipulated penalty otherwise payable for any violation, the difference shall be payable to the other sovereign. In no case shall the determination by one sovereign not to seek stipulated penalties preclude the other sovereign from seeking stipulated penalties, as otherwise provided for by, and consistent with, the terms of this Consent Decree.

56. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. The Defendant may initiate Dispute Resolution under Section XII within 30 days after receipt of the demand. The Defendant shall pay the amount demanded or, if it initiates dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand and payment instructions. The Defendant shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for (a) the uncontested penalty demand or uncontested portion, if late; and (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment.

57. Notwithstanding any other provision of this Section, the United States or the

Commonwealth, as appropriate, may, in its/their unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Decree.

58. Stipulated penalties shall automatically begin to accrue on the Day after performance is due or on the Day a violation occurs and shall continue to accrue each Day until performance is satisfactorily completed or until the violation or noncompliance ceases. Stipulated penalties shall accrue simultaneously for separate violations of or instances of noncompliance with this Consent Decree.

59. Following the United States' and/or the Commonwealth's determination that the Defendant has failed to comply with a requirement of this Consent Decree, the United States and/or the Commonwealth may give the Defendant written notification of the same and describe the noncompliance. The United States and/or the Commonwealth may send the Defendant a written demand for the payment of the stipulated penalties. However, the stipulated penalties shall accrue as provided in the preceding Paragraph regardless of whether the United States and/or the Commonwealth has notified the Defendant of a violation of or noncompliance with the requirements of this Consent Decree, or demanded payment of stipulated penalties.

60. The Defendant shall pay stipulated penalties as specified in this Section by delivering the payments to the United States and the Commonwealth, in equal amounts, within 30 Days of the date of a demand for payment of stipulated penalties (with payment instructions) in accordance with the instructions set forth as follows:

- a. Fifty percent (50%) of the stipulated penalties, as payment to the United States, shall be made, upon written demand, by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to the Defendant by the Financial Litigation Unit

of the U.S. Attorney's Office for the District of Massachusetts. At the time of payment, the Defendant shall send a copy of the EFT authorization form and EFT transaction record, together with a transmittal letter, which shall state that the payment is for stipulated penalties owed pursuant to the Consent Decree in United States and Commonwealth of Massachusetts v. City of Lowell, Massachusetts, and shall reference the civil action number and DOJ case number 90-5-1-1-12515, to the United States in accordance with Section XIV (Form of Notice); by email to acctsreceivable.CINWD@epa.gov; and by mail to: EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268.

- b. Fifty percent (50%) of the stipulated penalties, as payment to the Commonwealth, shall be made, upon written demand, by EFT to the Commonwealth in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Office of Attorney General

ABA#: 011075150
ACCOUNT#: 00088882022
SANTANDER BANK
75 STATE STREET
BOSTON, MA 02109
TIN: 046002284

and shall include the following in the payment information: "EPD, Commonwealth v. City of Lowell." Any payments received by the Commonwealth after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment, the City shall send notice, by electronic mail, that such payment has been made to the Commonwealth to I. Andrew

Goldberg, Environmental Protection Division at andy.goldberg@mass.gov and shall include all of the payment information stated in this Paragraph in addition to the amount of the payment.

61. In the event the Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, such penalty (or portion thereof) shall be subject to Interest at the statutory judgment rate set forth at 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 failure of the Defendant to pay any stipulated penalties.

62. Stipulated penalties shall continue to accrue as provided in this section during any dispute resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement or a decision of the United States and/or the Commonwealth that is not appealed to the Court, the Defendant shall pay accrued penalties determined to be owed, together with interest, to the United States and the Commonwealth within 30 Days of the effective date of the agreement or the receipt of the United States' and/or the Commonwealth's decision or order.
- b. If the dispute is appealed to the Court and the United States and/or the Commonwealth prevail in whole or in part, the City shall pay all accrued penalties determined to be owed, 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, the Defendant shall pay all accrued penalties determined to be owed, together with interest, within 15

Days of receiving the final appellate court decision and payment instructions, whichever is later.

63. The stipulated penalties set forth above shall be in addition to any other remedies, sanctions, or penalties which may be available by reason of the Defendant's failure to comply with the requirements of this Consent Decree. The United States and the Commonwealth expressly reserve any and all legal and equitable remedies, including contempt sanctions, which may be available to enforce the provisions of this Consent Decree.

X. CIVIL PENALTY

64. Within sixty (60) Days after the Effective Date, the City shall pay a civil penalty of \$ 200,000, which shall be divided between the Plaintiffs as follows:

- a. \$ 100,000 to the United States; and
- b. \$ 100,000 to the Commonwealth.

The Defendant shall pay the civil penalty in the manner specified in Paragraph 60.

XI. FORCE MAJEURE

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

Stipulated Penalties shall not be due for the number of Days of noncompliance caused by a Force Majeure event as defined in this Section, provided that the City complies with the terms of this Section.

66. If any event occurs which may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the City shall notify EPA and MassDEP within 72 hours after the City first knew or should have known that the event might cause a delay. Within 5 working Days thereafter, the City shall submit to EPA and MassDEP, at the addresses specified in Section XIV (Form of Notice), a written explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measure(s) taken and to be taken by the City to prevent or minimize the delay, a proposed schedule for the implementation of such measures, 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. Notwithstanding the foregoing, the City shall notify EPA and MassDEP orally within 24 hours of becoming aware of any event that presents an imminent threat to the public health or welfare or the environment and provide written notice to EPA within five (5) Days of discovery of such event. The City shall be deemed to know of any circumstances of which the City, any entity controlled by the City, or the City's contractors knew or should have known. Failure to provide timely and complete notice in accordance with this Paragraph shall constitute a waiver of any claim of Force Majeure with respect to the event in question provided, however, that the United States and Commonwealth may, in their unreviewable discretions, excuse such failure if it is able to assess to their satisfaction whether the event is a force majeure, and whether Defendant has exercised its best efforts, under Paragraph 65.

67. If EPA and MassDEP agree that a delay or anticipated delay is attributable to Force Majeure, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by EPA and MassDEP for a period of time as may be necessary to allow performance of such obligations. 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.

68. If EPA and MassDEP do not agree the delay or anticipated delay is attributable to Force Majeure, or on the number of Days of noncompliance caused by such event, EPA will notify the City in writing of their decision. The City may then elect to initiate the dispute resolution process set forth in Section XII (Dispute Resolution). In any dispute resolution 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 this Section. 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(s) of this Consent Decree identified to EPA, MassDEP, and the Court.

69. Delay in performance of any obligation under this Consent Decree shall not automatically justify or excuse delay in complying with any subsequent obligation or requirement of this Decree.

70. Failure of the City to obtain any State or Federal grants or loans shall not be considered a Force Majeure event under this Consent Decree.

XII. DISPUTE RESOLUTION

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

72. 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 DOJ, EPA, and the Commonwealth a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States and/or the Commonwealth, as appropriate, shall be considered binding unless, within 20 Days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below.

73. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ, EPA, and the Commonwealth 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.

74. The United States and/or the Commonwealth will send the City its Statement of

Position within 45 Days of receipt of the City's Statement of Position. The United States' and/or the Commonwealth's, as appropriate, Statement(s) 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' and/or the Commonwealth's Statement(s) of Position is binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

75. Judicial Dispute Resolution. The City may seek judicial review of the dispute by filing with the Court and serving on the United States and/or the Commonwealth, as appropriate, a motion requesting judicial resolution of the dispute. The motion must be filed within 20 Days of receipt of the United States' and/or the Commonwealth's Statement(s) 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.

76. The United States and/or the Commonwealth, as appropriate, 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.

Standard of Review

77. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 73 regarding the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA and/or MassDEP under this Consent Decree, regarding the adequacy of the performance of work undertaken pursuant to this Consent Decree, or that is

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 and/or the Commonwealth, as appropriate, is arbitrary and capricious or otherwise not in accordance with law.

78. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 73 (Formal Dispute Resolution), the City shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree set forth in Section V (Objectives).

79. 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.

XIII. RIGHT OF ENTRY/INFORMATION COLLECTION AND RETENTION

80. EPA and MassDEP and their contractors, consultants, and attorneys shall have authority to enter any property and/or facility owned and/or controlled by the City, at all reasonable times, upon proper identification, for the purposes of: (a) monitoring the progress of activities required by this Consent Decree; (b) verifying any data or information submitted to EPA and MassDEP under this Consent Decree; (c) assessing the City's compliance with this Consent Decree; (d) obtaining samples and, upon request, splits of any samples taken by the City or its representatives, contractors, or consultants; and (e) obtaining documentary evidence, including photographs and similar data. Upon request, EPA and MassDEP shall provide the City splits of any samples taken by EPA or MassDEP. This requirement is in addition to, and does not limit, the authority of EPA pursuant to the CWA, the Massachusetts Act, or any other provision of Federal or State law or regulation.

81. Until two years after the termination of this Consent Decree, the City shall retain all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) generated by the City, and all data collected and all reports generated by the City's contractors (including data and reports in electronic form), that relate in any manner to the City's performance of its obligations under this Consent Decree. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the Commonwealth, the City shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

82. At the conclusion of the information-retention period provided in the preceding Paragraph, the City shall notify the United States and the Commonwealth at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the Commonwealth, the City shall deliver any such documents, records, or other information to EPA or MassDEP. The City may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by Federal law. If the City asserts such a privilege, it shall provide the following: (a) 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, data, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

83. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the Commonwealth 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.

XIV. FORM OF NOTICE

84. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Decree must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Decree, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ: *via email to:*

eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-12515

As to EPA: *via email to:*

Michael Wagner
Senior Enforcement Counsel
wagner.michael@epa.gov

Douglas Koopman, Environmental Engineer
koopman.doug@epa.gov

As to Massachusetts
Attorney General's

Office: *via email to:*

I. Andrew Goldberg, Assistant Attorney General,
Environmental Protection Division
andy.goldberg@mass.gov

As to MassDEP: *via email to:*

Susannah L. King, Chief, Wastewater Management
Section, Northeast Regional Office
susannah.king@mass.gov

Heidi M. Zisch, Counsel, Office of General Counsel,
Northeast Regional Office
heidi.zisch@mass.gov

As to City of Lowell: *via email to:*

City Solicitor
Lowell City Hall
375 Merrimack Street
Lowell, MA 01852
JMcKenna@lowellma.gov

Executive Director
Lowell Regional Wastewater Utility
451 First Street Blvd
Lowell, MA 01850
AFox@lowellma.gov

85. All written notices, reports or any other submissions required of the City by this Consent Decree shall contain the following certification by a duly authorized representative of the City:

I certify under penalty of perjury 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 have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

86. This Consent Decree resolves the civil claims of the United States and the Commonwealth for the violations alleged in the Complaints filed in this action through the date of lodging.

87. This Consent Decree is neither a permit nor a modification of any existing permit under any Federal, State, or local law or regulation. The City is responsible for achieving and maintaining complete compliance with all applicable Federal, State, and local laws and regulations, and permits, and the City's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the Commonwealth do not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or with any other provisions of Federal, State, or local laws, regulations or permits. This Consent Decree shall not be construed to constitute EPA and/or MassDEP approval of any equipment or technology installed by the City under the terms of this Consent Decree.

88. The United States and the Commonwealth reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the Commonwealth to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other Federal or State laws, regulations, or permit conditions, except as expressly specified in Paragraph 86. The United States further reserves all legal and equitable remedies to address any imminent and

substantial endangerment to the public health or welfare or the environment arising at, or posed by, the LRWU, Wastewater Collection System, or CSO Outfalls, whether related to the violations addressed in this Consent Decree or otherwise.

89. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth for injunctive relief, civil penalties, or other appropriate relief relating to the City's LRWU, Wastewater Collection System or CSO Outfalls, or the City's violations of Federal or State law, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Commonwealth 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 86.

90. This Consent Decree does not resolve any claims for contingent liability under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e). The United States specifically reserves any such claims against the Commonwealth.

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

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

XVI. COSTS

93. Each Party shall bear its own expenses, costs, and attorney's fees in this action. The City shall be responsible for all expenses, costs and attorney's fees incurred by the United States and the Commonwealth in collecting any penalties due and payable under Section IX (Stipulated Penalties) of this Consent Decree. In no event shall the United States or the Commonwealth be responsible for any expenses, costs or attorney's fees incurred by the City.

XVII. EFFECTIVE DATE

94. 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 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.

XVIII. RETENTION OF JURISDICTION

95. 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 or XIX, or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

96. The terms of this Consent Decree, including any attached appendices and any submitted and approved deliverables, 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. Nonmaterial modifications to schedules specified in this Decree, or any attached appendices or submitted and approved deliverables, may be made by written agreement of the Parties. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 77 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. FUNDING

97. Performance of the terms of this Consent Decree by the City is not conditioned on the receipt of any Federal or State grant funds or loans. In addition, performance is not excused by the lack of Federal or State grant funds or loans.

XXI. SEVERABILITY

98. The provisions of this Consent Decree shall be severable, and should any provision be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.

XXII. TERMINATION

99. After the City completes all of the requirements of Section VI (Remedial Measures) and Section VII (Reports on Compliance), complies with all other requirements of the Consent Decree, and has paid in full all civil penalties and accrued stipulated penalties and all accrued interest thereon, as required by this Consent Decree, the City may serve upon the United States and the Commonwealth a Request for Termination, stating that the City has satisfied those requirements, together with all applicable supporting documentation.

100. Following receipt by the United States and the Commonwealth 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 satisfied the requirements for termination of this Consent Decree. If the United States, after consultation with the Commonwealth, agrees that this Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

101. If the United States and/or the Commonwealth do not agree that the Decree may be terminated the City may invoke dispute resolution under Section XII (Dispute Resolution). However, the City shall not seek Dispute Resolution of any dispute regarding termination until 90 Days after service of its Request for Termination.

XXIII. SIGNATORIES / SERVICE

102. Each undersigned representative of the City, Commonwealth of Massachusetts, EPA, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice identified on the DOJ signature page below, 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.

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

XXIV. PUBLIC PARTICIPATION

104. This Consent Decree shall 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 comments received disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate, and the Commonwealth reserves the right to withdraw or withhold consent if the United States withdraws or withholds consent and/or if the comments received disclose facts or considerations which indicate that this Consent Decree is inconsistent with state law. The City consents to the 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 this Decree, unless the United States has notified the City in writing that it no longer supports entry of this Decree.

XXV. INTEGRATION

105. This Consent Decree, including deliverables that are subsequently approved pursuant to this Decree, constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements, and understandings, whether oral or written, concerning the subject matter of the Decree herein (including, but not limited to Administrative Order on Consent, Docket No. CWA-AO-R01-FY17-16; Findings of Violation and Order for Compliance, Docket No. 010-026).

XXVI. FINAL JUDGMENT

106. Upon approval and entry of the Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the Commonwealth of Massachusetts, and Defendant.

XXVII. APPENDIX

107. The following appendix is attached to and part of this Consent Decree:

“Appendix A” is the Wastewater Collection System CMOM Program Self-Assessment Checklist.

Judgment is hereby entered in accordance with the foregoing Consent Decree this ___ day of _____, 20__.

UNITED STATES DISTRICT JUDGE

District of Massachusetts

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. City of Lowell, Massachusetts*.

FOR THE UNITED STATES OF AMERICA:

Respectfully submitted,

TODD KIM
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division



DAVID L. GORDON
Senior Counsel
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

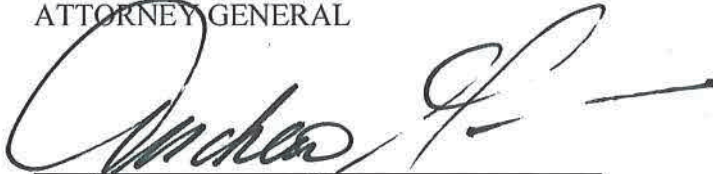
1/31/24

Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. City of Lowell, Massachusetts.*

THE COMMONWEALTH OF MASSACHUSETTS:

ANDREA JOY CAMPBELL
ATTORNEY GENERAL



I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
One Ashburton Place, 18th Floor
Boston, MA 02108



Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. City of Lowell, Massachusetts*.

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, WATER ENFORCEMENT DIVISION

**JOSEPH
THEIS**

Digitally signed by
JOSEPH THEIS
Date: 2024.01.31
13:57:45 -05'00'

JOSEPH G. THEIS
Acting Director, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and
Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Date

Lourdes Bufill

Digitally signed by
Lourdes Bufill
Date: 2024.01.18
14:14:59 -05'00'

LOURDES BUFILL
Attorney, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. City of Lowell, Massachusetts*.

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1

CARL DIERKER

Digitally signed by CARL
DIERKER
Date: 2024.01.08 16:07:01
-05'00'

CARL DIERKER
Regional Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

Date

Of Counsel

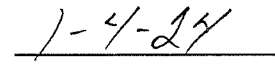
TONIA BANDROWICZ
Senior Enforcement Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square,
Boston, MA 02109

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. City of Lowell, Massachusetts*.

For Defendant CITY OF LOWELL, MA



JOHN J. MCKENNA
First Assistant City Solicitor



Date

Attachment A

Oct 2010 Wastewater Collection System CMOM Program Self-Assessment Checklist

Name of your system _____

Date _____

Put an "A" in the final column for an issue you intend to address with future action, or leave blank if you have evaluated your program as sufficient.

I. General Information – Collection System Description

I	Question	Response	*Act
1	How many people are served by your wastewater collection system?		
2	What is the number of service connections to your collection system? How many: Manholes? Pump stations? Feet (or miles) of sewer? Force mains? Siphons?		
3	What is the age of your system (e.g., 30% over 30 years, 20% over 50 years, etc.)?		
4	What type(s) of collection system map is/are available and what percent of the system is mapped by each method (e.g., paper only, paper scanned into electronic, digitized, interactive GIS, etc.)? When where the map(s) last updated?		
5	If you have a systematic numbering and identification method/system established to identify sewer system manhole, sewer lines, and other items (pump stations, etc.), please describe.		
6	Are "as-built" plans (record drawings) or maps available and used by field crews in the office and in the field?		
7	Describe the type of asset management (AM) system you use (e.g. card catalog, spreadsheets, AM software program, etc.)		

II. Continuing Sewer Assessment Plan

II	Question	Response	*Act
1	Under what conditions, if any, does the collection system overflow? Does it overflow during wet and/or dry weather? Has your system had problems with: <input type="checkbox"/> hydraulic issues, <input type="checkbox"/> debris, <input type="checkbox"/> roots, <input type="checkbox"/> Fats, Oils & Grease (FOG), <input type="checkbox"/> vandalism blockages resulting in manhole overflows, <input type="checkbox"/> basement backups, <input type="checkbox"/> other (specify)? Describe your system's history of structural collapses, and PS or force main failures.		
2	How many SSOs have occurred in each of the last three calendar years? What is the most frequent cause?		
3	Of those SSOs, how many basement backups occurred in each of the last three calendar years? How are they documented?		
4	What is the ratio of peak wet-weather flow to average dry-weather flow at the wastewater treatment plant (or municipal boundary for satellite collection systems)?		
5	What short-term measures have been implemented or plan to be implemented to mitigate the overflows? If actions are planned, when will they be implemented?		
6	What long-term measures have been implemented or plan to be implemented to mitigate the overflows? If actions are planned, when will they be implemented?		
7	Describe your preventive maintenance program; how do you track it (e.g., card files, electronically, with specific software)?		
8	How do you prioritize investigations, repairs and rehabilitation? What critical and priority problem areas are addressed more frequently than the remainder of your system? How frequently are these areas evaluated?		
9	Are septage haulers required to declare the origin of their "load"? Are records of these declarations maintained? Do any of the declarations provide evidence of SSOs?		

III.A. Collection System Management Organizational Structure

IIIA	Question	Response	*Act
1	Do you have an organizational chart that shows the overall personnel structure for collection system operations, including operation and maintenance staff? Please attach your chart.		
2	For which jobs do you have up-to-date job descriptions that delineate responsibilities and authority for each position?		
3	How many staff members are dedicated to collection system maintenance? Of those, how many are responsible for any other duties, (e.g., road repair or maintenance, O&M of the storm water collection system)? If so, describe other duties.		
4	Are there any collection system maintenance position vacancies? How long has the position(s) been vacant?		
5	For which, if any, maintenance activities do you use an outside contractor?		
6	Describe any group purchase contracts you participate in.		

III.B. Collection System Management: Training

IIIB	Question	Response	*Act
1	What types of training are provided to staff?		
2	Is training provided in the following areas: general safety, routine line maintenance, confined space entry, MSDS, lockout/tagout, biologic hazards, traffic control, record keeping, electrical and instrumentation, pipe repair, public relations, SSO/emergency response, pump station operations and maintenance, trench/shoring, other (describe)?		
3	Which training requirements are mandatory for key employees?		

4	How many collection system employees are certified (e.g, NEWEA certification program) and at what grade are they certified?		
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III.C. Collection System Management: Communication and Customer Service

IIIC	Question	Response	*Act
1	Describe your public education/outreach programs (e.g., for user rates, FOG, extraneous flow, SSOs etc.)		
2	What are the most common collection system complaints? How many complaints have you received in each of the past three calendar years?		
3	Are formal procedures in place to evaluate and respond to complaints?		
4	How are complaint records maintained (i.e., computerized)? How are complaints tied to emergency response and operations and maintenance programs?		

III.D. Collection System Management: Management Information Systems

IIID	Question	Response	*Act
1	How do you manage collection system information? (Commercial software package, spreadsheets, data bases, SCADA, etc). What information and functions are managed electronically?		
2	What procedures are used to track and plan collection system maintenance activities?		
3	Who is responsible for establishing maintenance priorities? What records are maintained for each piece of mechanical equipment within the collection system?		
4	What is the backlog for various types of work orders?		
5	How do you track emergencies and your response to emergencies? How do you link emergency responses to your maintenance activities?		

6	What written policies/protocols do you have for managing and tracking the following information: complaint work orders, scheduled work orders, customer service, scheduled preventative maintenance, scheduled inspections, sewer system inventory, safety incidents, emergency responses, scheduled monitoring/sampling, compliance/overflow tracking, equipment/tools tracking, parts inventory?		
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III.E. Collection System Management: SSO Notification Program

III E	Question	Response	*Act
1	What are your procedures, including time frames, for notifying state agencies, health agencies, regulatory authorities, and the drinking water authorities of overflow events?		
2	Do you use the state standard form for recording/reporting overflow events? If not, provide a sample copy of the form that is used.		

III.F. Collection System Management: Legal Authority

III F	Question	Response	*Act
1	Are discharges to the sewer regulated by a sewer use ordinance (SUO)? Does the SUO contain procedures for controlling and enforcing the following: <input type="checkbox"/> FOG; <input type="checkbox"/> Infiltration/ Inflow (I/I); <input type="checkbox"/> building structures over the sewer lines; <input type="checkbox"/> storm water connections to sanitary lines; <input type="checkbox"/> defects in service laterals located on private property; <input type="checkbox"/> sump pumps?		
2	Who is responsible for enforcing various aspects of the SUO? Does this party communicate with your department on a regular basis?		
3	Summarize any SUO enforcement actions/activities that have occurred in the last three calendar years.		

4	Do you have a program to control FOG entering the collection system? If so, which of the following does it include: <input type="checkbox"/> permits, <input type="checkbox"/> inspection <input type="checkbox"/> enforcement? Are commercial grease traps inspected regularly and who is responsible for conducting inspections?		
5	Is there an ordinance dealing with storm water connections or requirements to remove storm water connections?		
6	Does the collection system receive flow from satellite communities? Which communities? How are flows from these satellite communities regulated? Are satellite flow capacity issues periodically reviewed?		
7	Does the collection system receive flow from private collection systems? If yes, how is flow from these private sources regulated? How are overflows dealt with? Provide details, including contact information for these private systems.		

IV.A. Collection System Operation: Financing

IV A	Question	Response	*Act
1	Has an enterprise (or other) fund been established and what does it include: wastewater collection and treatment operations; collection system maintenance; long-term infrastructure improvements; etc.? Are the funds sufficient to properly fund future system needs?		
2	How are rates calculated (have you done a rate analysis)? What is the current sewer charge rate? When was it last increased? How much was the increase?		
3	What is your O&M budget?		
4	If an enterprise fund has not been established, how are collection system maintenance operations funded?		

5	Does a Capital Improvement Plan (CIP) that provides for system repair/replacement on a prioritized basis exist? What is the collection system's average annual CIP budget?		
6	How do you account for the value of your system infrastructure for the Government Accounting Standards Board standard 34 (GASB 34)?		

IV.B. Collection System Operation: Hydrogen Sulfide Monitoring and Control

IV B	Question	Response	*Act
1	Are odors a frequent source of complaints? How many have been received in the last calendar year?		
2	Do you have a hydrogen sulfide problem, and if so, do you have corrosion control programs? What are the major elements of the program?		
3	Does your system contain air relief valves at the high points of the force main system? How often are they inspected? How often are they exercised?		

IV.C. Collection System Operation: Safety

IV C	Question	Response	*Act
1	Do you have a formal Safety Training Program? How do you maintain safety training records?		
2	Which of the following equipment items are available and in adequate supply: <input type="checkbox"/> rubber/disposable gloves; <input type="checkbox"/> confined space ventilation equipment; <input type="checkbox"/> hard hats, <input type="checkbox"/> safety glasses, <input type="checkbox"/> rubber boots; <input type="checkbox"/> antibacterial soap and first aid kit; <input type="checkbox"/> tripods or non-entry rescue equipment; <input type="checkbox"/> fire extinguishers; <input type="checkbox"/> equipment to enter manholes; <input type="checkbox"/> portable crane/hoist; <input type="checkbox"/> atmospheric testing equipment and gas detectors; <input type="checkbox"/> oxygen sensors; <input type="checkbox"/> H2S monitors; <input type="checkbox"/> full body		

	harness; <input type="checkbox"/> protective clothing; <input type="checkbox"/> traffic/public access control equipment; <input type="checkbox"/> 5-minute escape breathing devices; <input type="checkbox"/> life preservers for lagoons; <input type="checkbox"/> safety buoy at activated sludge plants; <input type="checkbox"/> fiberglass or wooden ladders for electrical work; <input type="checkbox"/> respirators and/or self-contained breathing apparatus; <input type="checkbox"/> methane gas or OVA analyzer; <input type="checkbox"/> LEL metering?		
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IV.D. Collection System Operation: Emergency Preparedness and Response

IV D	Question	Response	*Act
1	Do you have a written collection system emergency response plan? When was the plan last updated? What departments are included in your emergency planning?		
2	Which of the following issues are considered: <input type="checkbox"/> vulnerable points in the system, <input type="checkbox"/> severe natural events, <input type="checkbox"/> failure of critical system components, <input type="checkbox"/> vandalism or other third party events (specify), <input type="checkbox"/> other types of incidents (specify)?		
3	How do you train staff to respond to emergency situations? Where are responsibilities detailed for personnel who respond to emergencies?		
4	How many emergency calls have you had in the past calendar year?		

IV.E. Collection System Operation: Engineering – Capacity

IV E	Question	Response	*Act
1	How do you evaluate the capacity of your system and what capacity issues have you identified, if any? What is your plan to remedy the identified capacity issues?		
2	What procedures do you use to determine whether the capacity of existing gravity sewer system, pump stations and force mains are adequate for new connections? Who does this evaluation?		

3	Do you charge hook up fees for new development and if so, how are they calculated?		
4	Do you have a hydraulic model of your collection system? Is it used to predict the effects of system remediation and new connections?		

IV.F. Collection System Operation: Pump Stations - Inspection

IV F	Question	Response	*Act
1	How many pump stations are in the system? How often are pump stations inspected? How many are privately owned, and how are they inspected? Do you use an inspection checklist?		
2	Is there sufficient redundancy of equipment at all pump stations?		
3	How are pump stations monitored? If a SCADA system is used, what parameters are monitored?		
4	How many pump station/force main failures have you had in each of the last three years? Who responds to pump station/force main failures and overflows? How are the responders notified?		
5	How many pump stations are equipped with backup power sources? How many require portable generators? How many portable generators does your system own? Explain how the portable generators will be deployed during a system-wide electrical outage.		
6	Are operation logs maintained for all pump stations? Are the lead, lag, and backup pumps rotated regularly?		
7	Is there a procedure to modify pump operations (manually, or automatically), during wet weather to increase in-line storage of wet weather flows? If so, describe.		

V.A. Equipment and Collection System Maintenance: Sewer Cleaning

V A	Question	Response	*Act
1	What is your schedule for cleaning sewer lines on a system-wide basis? At this frequency, how long will it take to clean the system? How are sewer cleaning efforts documented?		
2	How many linear miles of the collection system were cleaned in each of the past 3 calendar years?		
3	How do you identify sewer line segments that have chronic problems and should be cleaned more frequently? Is a list of these areas maintained and cleaning frequencies established?		
4	Approximately, how many collection system blockages have occurred during the last calendar year, and what were the causes?		
5	Has the number of blockages increased, decreased, or stayed the same over the past five years?		
6	What equipment is available to clean sewers? Is any type of cleaning contracted to other parties? If yes, under what circumstances?		
7	Do you have a root control program? Describe its critical components.		

V.B. Equipment and Collection System Maintenance: Maintenance Right-of-Way

V B	Question	Response	*Act
1	Is scheduled maintenance performed on Rights-of-Way and Easements? At what frequency? How many manholes in easement areas can not be located?		
2	Are road paving projects coordinated with the collection system operators? Have manholes been paved over? How many manholes in paved areas can not be located? Describe any systems in place for locating and raising manholes that have been paved over.		

V.C. Equipment and Collection System Maintenance: Parts Inventory

V C	Question	Response	*Act
1	Do you have a central location for the storage of spare parts?		
2	How have critical spare parts been identified?		
3	How to you determine if adequate supplies on hand? Has an inventory tracking system been implemented?		

VI A. SSES: System Assessment

VI A	Question	Response	*Act
1	Do POTW flow records or prior I/I or SSES programs indicate the presence of public/private inflow sources or sump pumps? Please Explain.		
2	If problems are related to I/I, has a Sewer System Evaluation Survey (SSES) been conducted? When? What is the status of the recommendations?		
3	Do you have a program to identify and eliminate sources of I/I into the system including private service laterals and illegal connections? If so, describe.		
4	Have private residences been inspected for sump pumps and roof leader connections?		
5	Are inspections to identify illicit connections conducted during the property transfer process?		
6	How many sump pumps and roof leaders have been identified? How many have been removed?		
7	Have follow-up homeowner inspections been conducted?		
8	What incentive programs exist to encourage residences to disconnect roof leaders & sump pumps? (i.e. matching funds, etc.)		
9	What disincentive programs exist to encourage residences to disconnect roof leaders & sump pumps? (i.e. fines, surcharges)		

VI.B. SSES: Manhole Inspection

VI B	Question	Response	*Act
1	Do you have a manhole inspection and assessment program?		
2	Has a formal manhole inspection checklist been developed?		
3	How many manholes were inspected during the past calendar year?		

VII. Energy Use

VII	Question	Response	*Act
1	What is your annual energy cost for operating your system? For which pieces of equipment do you track energy use?		
2	Have you upgraded any of your pumps and motors to more energy efficient models? If so, please describe.		
3	Have you performed an energy audit in the past three years?		
4	Where do you use the most energy (fuel, electricity) in operating your collection system?		
5	If you have a treatment plant, would you be interested in participating in EnergyStar benchmarking of your treatment plant?		

VIII. Other Actions

VIII	Question	Response	*Act
1	Describe any other actions that you plan to take to improve your CMOM Program that are not discussed above.		