

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA and the
STATE OF INDIANA,

Plaintiffs,

v.

The SANITARY DISTRICT OF
HIGHLAND and the TOWN OF GRIFFITH,
INDIANA,

Defendants.

Civil Action No. 2:22-cv-00086

CONSENT DECREE WITH THE SANITARY DISTRICT OF HIGHLAND

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APPENDICES

Appendix A: Highland’s SSO Remedial Measures and Post-Remedial Measures Monitoring Plan

Appendix B: Highland's SSO Locations List and Procedure to Eliminate Subsequently
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Appendix C: Highland’s SSO Reporting Table

WHEREAS:

A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Indiana (the “State”), on behalf of the Commissioner of the Indiana Department of Environmental Management (“IDEM”) (collectively the “Plaintiffs”), have filed a Complaint in this action concurrently with this Consent Decree, alleging that Defendant, the Sanitary District of Highland, Indiana (“Highland”), violated Section 301(a) of the Clean Water Act (the “CWA”), 33 U.S.C. § 1311(a), the federal regulations adopted thereunder, Title 13 of the Indiana Code, and the State regulations adopted thereunder.

B. The Complaint alleges that Highland: (1) violated the CWA and Indiana law by discharging untreated sewage into a navigable water from its sanitary sewer system on over 200 occasions since July 2012; and (2) failed to materially comply with an order issued by EPA pursuant to Section 309(a) of the CWA to eliminate its sanitary sewer overflows, among other requirements.

C. A related action (2:17-cv-00048) was filed in this district by the United States and the State against the Hammond Sanitary District (“HSD”) in 2017, alleging that HSD violated the CWA by, among other things, exceeding numeric and narrative effluent limits set in HSD’s National Pollutant Discharge Elimination System (“NPDES”) Permit, including discharging untreated storm water and sanitary wastewater through its combined sewer overflow (“CSO”) outfalls into the Grand Calumet and Little Calumet Rivers.

D. The allegations against HSD in the complaint were resolved through a consent decree that was filed simultaneously with the complaint (the “HSD Consent Decree”). The HSD Consent Decree was entered by this Court on May 8, 2017, and required HSD to, among other

things, develop and implement a Long Term Control Plan, as approved by EPA and IDEM, over an 18-year period to substantially reduce CSO discharges from HSD's sewer system and pay penalties for past violations of the CWA. HSD's Long Term Control Plan was conditionally approved by EPA and IDEM on March 17, 2021.

E. Highland does not have its own wastewater treatment plant; rather, it is under contract with HSD to send all of its sanitary flow to HSD for treatment. Under the current wastewater treatment contract between Highland and HSD, Highland may send a maximum peak flow of 7.5 million gallons per day ("MGD") to HSD for treatment. During significant wet weather, however, Highland either sends flows to HSD that exceeds the contractual limit of 7.5 MGD maximum peak flow or experiences sanitary sewer overflows.

F. Under this Consent Decree, Highland will implement a plan approved by EPA and IDEM designed to improve Highland's sanitary sewer collection system and eliminate and prevent SSOs. As part of the plan, Highland will make necessary improvements within its sewer system that will eventually allow it to send to HSD for treatment a maximum peak flow of 32.2 million gallons per day. In order for HSD to accept this increased flow, HSD will make the necessary improvements within its combined sewer system as required by the HSD Consent Decree and the Long Term Control Plan being implemented thereunder.

G. As part of work that HSD will do under its Consent Decree and LTCP (as conditionally approved by EPA and IDEM on March 17, 2021), HSD will increase its capacity to accept flow for treatment from its customer communities. As part of these improvements, in a few years, HSD will have the capacity to accept up to 40 MGD maximum peak flow from Highland for treatment. HSD will be implementing the LTCP under the HSD Consent Decree. HSD's performance under the HSD Consent Decree and Highland's performance under this

Consent Decree require continued cooperation and coordination between HSD and Highland. In order for Highland to begin construction under the Consent Decree, Highland must submit a complete sanitary sewer construction permit application, including a signed certification of capacity by HSD, and secure a valid State permit under Indiana law, 327 IAC 3-2.

H. The Parties agree that the United States and State of Indiana's joint filing of the Complaint and entry into this Consent Decree constitute diligent prosecution by the United States and the State of Indiana under CWA § 505(b)(1)(B), 33 U.S.C. § 1365(b)(1)(B), of all matters alleged in the Complaint and addressed by this Consent Decree through the Date of Lodging of this Decree;

I. Highland denies any liability to the United States or the State arising out of the violations, transactions or occurrences alleged in the Complaint.

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

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of liability, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. For purposes of this Consent Decree, the Parties agree this Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and CWA § 309(b), 33 U.S.C. § 1319(b), and over the Parties. The Parties also agree that this Court has supplemental jurisdiction over the State law claims alleged in the Complaint pursuant to 28 U.S.C. § 1367(a), because the State claims are related to the federal claims and form part of

the same case or controversy. The Parties also agree that venue is proper in this District pursuant to CWA § 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b), because it is the judicial district where Highland is located.

2. For purposes of this Decree, Highland waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Highland shall not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

II. PARTIES

3. "Highland" is the Sanitary District of Highland, Indiana, and is the political subdivision that owns and operates a separate sanitary sewer system in the City of Highland, Indiana.

4. The "United States" is a Plaintiff, the United States of America, acting on behalf of the EPA.

5. The "State" is a Plaintiff, the State of Indiana, acting on behalf of IDEM.

III. APPLICABILITY

6. This Decree applies to and is binding upon the United States and the State, and upon Highland and any successors, assigns, or other entities or persons otherwise bound by law.

7. No transfer of ownership or operation of the Sanitary Sewer Collection System ("SSCS"), whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Highland of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Highland shall provide a copy of this Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Attorney for the Northern District of Indiana, IDEM, and the United States Department of Justice, in

accordance with Section XVI (Notices) of this Decree. Any attempt to transfer ownership or operation of the SSCS without complying with this Paragraph constitutes a violation of this Decree.

8. Highland shall make available a copy of this Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Decree. Highland shall condition any such contract upon performance of the work in conformity with the terms of this Decree. Highland may satisfy the requirement to provide a copy of this Consent Decree by providing an electronic copy.

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

IV. OBJECTIVE

10. All plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Decree, or resulting from the activities required by this Decree, shall have the objective of causing Highland to achieve and maintain full compliance with the CWA.

V. DEFINITIONS

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

a. “Building/Property Backup” means a wastewater release or backup into a building or onto private property that is caused by blockages, flow conditions, or other

conditions in Highland's Sanitary Sewer Collection System. A wastewater backup or release that is caused solely by conditions in a Private Service Connection Lateral is not a Building/Property Backup for purposes of this Decree;

b. "Complaint" means the complaint filed by the United States and the State in this action against the Town of Griffith and the Sanitary District of Highland;

c. "Contractual Peak Flow Rate" means the maximum instantaneous or sustained pumping rate that Highland will send to HSD for treatment of 32.2 million gallons per day (MGD) of which 25 MGD will originate from the proposed Highland N. 5th Street Lift Station and 7.2 MGD will originate from the existing 81st Street Lift Station;

d. "Consent Decree" or "Decree" means this Consent Decree and all appendices attached hereto listed in Section XXIII;

e. "CWA" means the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended, and the regulations promulgated thereunder;

f. "Date of Lodging" means the date upon which this Decree is filed with the Court, before a period of at least 30 Days during which the United States accepts comments from the public regarding the terms of this Decree. The Date of Lodging is, by necessity, at least 30 days prior to the Effective Date of this Decree.

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

h. "Defendant" means the Sanitary District of Highland, Indiana, which is a political subdivision of the State;

- i. “Deliverable” means any written document required to be submitted by Highland to EPA and IDEM for review and approval under this Consent Decree;
- j. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies;
- k. “Effective Date” is defined as provided in Section XVII (Effective Date);
- l. “Force Main” means any pipe that receives and conveys, under pressure, wastewater from the discharge side of a pump;
- m. “Gravity Sewer Line” means pipes that receive, contain, and convey wastewater not normally under pressure, but intended to flow unassisted under the influence of gravity, including trunk sewers;
- n. “HSD Consent Decree” means the consent decree signed by the United States, on behalf of EPA, and the State of Indiana, on behalf of IDEM, and the Hammond Sanitary District, and entered on May 8, 2017, which requires, among other things, that the Hammond Sanitary District develop and implement a Long Term Control Plan that is consistent with EPA’s CSO Control Policy found at 59 Fed. Reg. 18,688 (April 19, 1994) and the terms of that consent decree, and as approved by EPA and IDEM;
- o. “HSD’s Approved Long Term Control Plan (“LTCP”)” means the Long Term Control Plan submitted by HSD under the HSD Consent Decree, conditionally approved by EPA and IDEM on March 17, 2021;
- p. “IDEM” means the Indiana Department of Environmental Management and any successor departments or agencies of the State;
- q. “Infiltration” means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such

means as defective pipes, pipe joints, connections, or manholes, but does not include, and is distinguished from, inflow, as defined by 40 C.F.R. § 35.2005(b)(20);

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

s. “I/I” means the total quantity of water from Infiltration and Inflow into the Sanitary Sewer Collection System without distinguishing the source;

t. “Million Gallons per Day” or “MGD” means a flow rate expressed in millions of gallons per day. A flow rate for a shorter period of time, such as an hour, may also be expressed in MGD. For example, a flow of one million gallons in an hour would be equivalent to a flow rate of 24 MGD;

u. “Paragraph” means a portion of this Decree identified by an Arabic numeral;

v. “Parties” means the United States, the State, and Highland;

w. “Plaintiffs” means the United States and the State.

x. “Private Service Connection Lateral” means any sewerage not owned by Highland used to convey wastewater from a building or buildings to the Sanitary Sewer Collection System owned by Highland;

y. “Pump Station” means a facility comprised of pumps that lifts wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural

systems necessary to operate that Pump Station;

z. “Sanitary Sewer Collection System” or “SSCS” means all portions of the municipal wastewater collection and transmission system, including all pipes, interceptors, Force Mains, Gravity Sewer Lines, lift stations, Pumping Stations, wastewater storage basins/structures, manholes, and all appurtenances to the foregoing, that are owned and/or operated by Highland;

aa. “Sanitary Sewer Overflow” or “SSO” means an overflow, a reportable spill pursuant to 327 IAC 2-6.1-6, a diversion, or a release of wastewater, from or caused by Highland’s SSCS, that: a) discharges to waters of the State or United States from Highland’s SSCS; or b) releases to public or private property that does not reach waters of the United States or the State, such as a release to a land surface or structure; provided, however, that such releases that are caused solely by conditions in a Private Service Connection Lateral are not SSOs for the purpose of this Decree. As such, the term SSO includes Building/Property Backups caused in whole or in part by conditions in Highland’s SSCS;

bb. “SSO Locations” means the locations where SSOs have occurred in Highland’s SSCS. A list of the SSO Locations that have been identified as of the Date of Lodging is included in Appendix B of this Consent Decree;

cc. “Section” means a portion of this Decree identified by a Roman numeral;

dd. “State” means the State of Indiana, acting on behalf of IDEM;

ee. “United States” means the United States of America, acting on behalf of EPA.

VI. CIVIL PENALTY

12. Within 60 Days after the Effective Date, Highland shall pay a civil penalty in the amount of \$87,500 to the United States and \$87,500 to the State for the violations alleged against Highland in the Complaint, together with interest from the Date of Lodging of this Decree, accruing at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

13. Highland shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Highland by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Northern Indiana after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Highland shall use to identify all payments required to be made in accordance with this Decree. The FLU will provide the payment instructions to:

Clerk-Treasurer
Town of Highland
3333 Ridge Road
Highland, Indiana 46322-2049
mgriffin@highland.in.gov

on behalf of Highland. Highland may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XVI (Notices).

14. At the time of payment, Highland shall send notice that payment has been made: (a) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (b) to the United States via email or regular mail in accordance with Section XVI; and (c) to EPA in accordance with Section XVI. Such notice shall state that the payment is for the civil penalty owed pursuant

to the Consent Decree in *United States of America and the State of Indiana v. the Sanitary District of Highland and the Town of Griffith, Indiana* (N.D. Ind.), the assigned CDCS Number, and DOJ case number 90-5-1-1-3308/4.

15. Payment to the State shall be made by certified check payable to:

Cashier:
Indiana Department of Environmental Management
100 N. Senate Ave.
MC 50-10C
Indianapolis, IN 46204-2251

Highland shall notify the State of this payment in accordance with Section XVI (Notices) of this Decree, by correspondence including the following: *United States of America and the State of Indiana v. the Sanitary District of Highland and the Town of Griffith, Indiana* (N.D. Ind.).

VII. COMPLIANCE REQUIREMENTS

16. SSOs occurring in or from Highland's SSCS are prohibited.

A. Implementing SSO Remedial Measures

17. SSO Remedial Measures Plan.

a. The purpose of the SSO Remedial Measures Plan is to eliminate all SSO Locations identified in Appendix B and prevent SSOs occurring in Highland's SSCS. Highland shall demonstrate elimination of all SSO Locations in accordance with Appendix A.

b. Within 30 Days of the Effective Date, Highland shall begin implementing the SSO Remedial Measures Plan, as provided in Appendix A of this Decree.

c. The SSO Remedial Measures Plan shall be completed by February 1, 2033.

18. Post-Remedial Measures Monitoring Plan. Highland will implement the Post-Remedial Measures Monitoring Plan by installing and operating the monitoring equipment, as

described in Part 2 of Appendix A of this Decree, and shall commence monitoring in accordance with the requirements and schedule of Part 2 of Appendix A of this Decree. The purpose of the Monitoring Plan is to determine whether the Remedial Measures undertaken have eliminated all SSO Locations identified in Appendix B and will prevent SSOs occurring in Highland's SSCS in accordance with Appendix A.

19. Post-Remedial Measures Monitoring Report. Within 180 Days of completing the monitoring under the Post-Remedial Measures Monitoring Plan, Highland shall submit a Post-Remedial Measures Monitoring Report to EPA and the State for review and approval. This report shall include the following:

- a. a tabulation of all SSOs that occurred in or from Highland's SSCS from the Date of Lodging through the completion of the Post-Remedial Measures Monitoring Plan. This tabulation shall include the information required under Paragraph 25 (Semi-Annual Overflow Logs) of this Decree and an analysis of the rainfall data using Bulletin 71, Rainfall Frequency Atlas of the Midwest or HERPICC Storm Water Drainage Manual, July 1995;
- b. applicable flow monitoring data;
- c. the results of Highland's validation or recalibration of its then-current SWMM Collection System Model (or modeling platform equivalent) that includes the remedial measures implemented under Appendix A; and
- d. the results from Highland's use of its SWMM Collection System Hydraulic Model (or modeling platform equivalent) to evaluate its successful implementation of the SSO Remedial Measures Plan including a narrative description about whether Highland's Remedial Measures Plan has eliminated SSOs in accordance with Appendix A.

20. Supplemental SSO Remedial Measures Plan. If at any time during the Post-Remedial Measures Monitoring period or after Highland submits its Post-Remedial Measures Monitoring Report, Highland demonstrates that it has not eliminated all SSO Locations and prevented SSOs in accordance with Appendix A, EPA and IDEM will notify Highland that it is required to submit a Supplemental SSO Remedial Measures Plan. Within 90 Days of receiving this notification, Highland shall submit to EPA and the State, for review and approval, a Supplemental SSO Remedial Measures Plan that proposes additional measures that Highland will undertake to eliminate SSO Locations and prevent SSOs within its SSCS consistent with Section 2.3 of Appendix A and a schedule for implementing the Supplemental SSO Remedial Measures. Upon written approval by EPA and the State, Highland shall implement the approved Supplemental SSO Remedial Measures Plan under the approved schedule.

21. Supplemental SSO Remedial Measures Monitoring Plan. Highland shall implement a Supplemental Post-Remedial Measures Monitoring Plan upon completion of the Supplemental SSO Remedial Measures Plan by installing and operating any additional monitoring equipment required, as described in Part 2 of Appendix A of this Decree, and shall commence monitoring in accordance with the requirements of Part 2 of Appendix A of this Decree. The purpose of the Supplemental SSO Remedial Measures Monitoring Plan is to determine whether the Supplemental SSO Remedial Measures undertaken have addressed all of the deficiencies identified in the Supplemental SSO Remedial Measures Plan.

22. Supplemental Remedial Measures Monitoring Report. Within 180 Days of completing the Supplemental SSO Remedial Measures Monitoring Plan, Highland shall submit a Supplemental SSO Remedial Measures Monitoring Report to EPA and the State for review and approval. This report shall include the following:

a. a tabulation of all SSOs that occurred in or from Highland's SSCS from the Date of Lodging through the Supplemental Remedial Measures Monitoring period. This tabulation shall include the information required under Paragraph 25 (Semi-Annual Overflow Logs) of this Decree and an analysis of the rainfall data using Bulletin 71, Rainfall Frequency Atlas of the Midwest or HERPICC Storm Water Drainage Manual, July 1995;

b. applicable flow monitoring data; the results of Highland's validation or recalibration of its then-current SWMM Collection System Model (or modeling platform equivalent) that includes both the SSO Remedial Measures implemented under Appendix A and the Supplemental SSO Remedial Measures Plan described in Paragraph 20 of this Decree; and the results from Highland's SWMM Collection System Hydraulic Model (or modeling platform equivalent) including a narrative description about whether Highland's SSO Remedial Measures Plan and Supplemental SSO Remedial Measures Plan have fully resolved all of the deficiencies identified in the original Supplemental SSO Remedial Measures Monitoring Report, with the purpose of ensuring that all SSO Locations have been eliminated and future SSOs are prevented in accordance with Appendix A.

B. SSO Flow Monitoring and Reporting Requirements

23. SSO Flow Monitors. Within 30 Days of the Effective Date, or within 30 Days from the date of discovering any additional SSO Location, Highland shall install and operate flow monitoring technology at each SSO Location, if it has not already done so, in order to detect and record when an SSO may occur or actually occurs at each SSO Location and to measure and record the volume of SSO discharged. To mitigate the adverse effect of any SSO, the flow monitoring device at each SSO Location shall instantaneously and automatically alert

Highland to an SSO event. Highland shall install and operate the following flow monitoring technology:

a. Area-velocity flow meters, such as Environmental Services Triton+ Flow Monitoring System with CS4 combo sensor or functional equivalent, in cross connect pipe at the following SSO locations: (i) Sanitary-to-Storm Sewer Cross Connect #1 (Sanitary Manhole 1345); and (ii) Sanitary-to-Storm Sewer Cross Connect #2 (Sanitary Manhole 1230);

b. Alarm system and the use of manually recorded pump start and stop times and speed adjustment times and speed settings to calculate discharge durations and volumes at the following SSO locations: (i) Constructed SSO at North 5th Street Lift Station; (ii) Constructed SSO at North 81st Street Lift Station; (iii) Constructed SSO at 41st Street Lift Station; and (iv) Constructed SSO in Northeast area of North 5th Street Subbasin, located at the intersection of Grace Place and Duluth Ave. The alarm system for locations (i) through (iii) above shall be provided by Highland's SCADA system for these sanitary lift stations. The alarm system for location (iv) above may be provided by an ADS Environmental Services ECHO ultrasonic level sensor installed in MH 1059 (or the functional equivalent thereof) that includes a cellular modem to instantaneously and automatically alert Highland to a high water level.

24. Reporting all SSOs. Highland shall report all SSOs from its SSCS. This reporting shall include:

a. contacting the Lake County Health Department at (219) 755-3655 within one hour of learning of the SSO or Building/Property Backup. All such notifications shall include the location of the SSO or Building/Property Backup, the receiving and impacted waters, if any, and an estimation of the volume of the discharge; and

b. an initial electronic report to IDEM by email, with a copy to EPA, within

24-hours of the time Highland becomes aware of the SSO or Building/Property Backup. The electronic report will be completed using State Form 48373 and emailed to IDEM at wwreports@idem.IN.gov and to EPA at r5weca@epa.gov. The email subject line will specify that the correspondence is concerning an SSO or Building/Property Backup in Highland, Indiana, and the body of the email shall reference the docket number for this Consent Decree as well as the State case identifier number (INN580004). The completed State Form 48373 for each SSO location shall be attached to the email.

25. Semi-Annual Overflow Logs. By July 31st (for the reporting period of January – June) and January 31st (for the reporting period of July – December) of each year beginning the calendar year after this Decree is lodged, Highland shall submit copies of its final and completed electronic reports to IDEM and EPA using State Form 48373 for each SSO location at which an SSO occurred during the reporting period. Highland shall also complete and submit to IDEM and EPA the SSO Reporting Table attached hereto as Appendix C for every SSO that occurred during the reporting period.

C. Miscellaneous Compliance Provisions

26. Based on evaluations of previous drafts of the plans by all Parties, Highland has submitted an updated Capacity, Management, Operation, and Maintenance Plan and Overflow Emergency Response Plan to EPA and IDEM for review and approval. Upon approval, Highland shall immediately begin implementing the plans.

27. Approval of Deliverables. After review of any Deliverable submitted by Highland under this Decree, EPA and the State shall in writing: (a) approve the submission; (b) approve part of the submission and disapprove the remainder; or (c) disapprove the whole submission.

28. If the submission is approved pursuant to Paragraph 27(a), Highland shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is approved only in part pursuant to Paragraph 27(b), Highland shall, upon written direction from EPA and the State, take all actions required by the approved plan, report, or other item that EPA and the State determine are technically severable from any disapproved portions, subject to Highland's right to dispute only the disapproved portions, under Section XII (Dispute Resolution).

29. If the submission is disapproved in whole or in part pursuant to Paragraph 27(b) or (c), Highland 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, Highland shall proceed in accordance with the preceding Paragraph.

30. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA and the State may again require Highland to correct any deficiencies, in accordance with the preceding Paragraphs, or may themselves correct any deficiencies subject to Highland's right to invoke Dispute Resolution and the right of EPA and the State to seek stipulated penalties as provided in Section X (Stipulated Penalties) of this Decree.

31. Any stipulated penalties applicable to the original submission, as provided in Section X, shall accrue during the 45 day period provided in Paragraph 27 or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Highland's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

32. Permits. Where any compliance obligation under this Section requires Highland to obtain a federal, state, or local permit or approval, Highland shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Highland may seek relief under the provisions of Section XI (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Highland has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VIII. REPORTING REQUIREMENTS

33. Semi-Annual Report. By July 31st and January 31st of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XX (Termination), unless otherwise agreed to by EPA and the State in writing, Highland shall submit to Plaintiffs pursuant to Section XVI (Notices), a Semi-Annual Report that shall: (a) describe the work, and associated deadlines, that Highland completed under this Decree during the preceding six-month period; (b) include documentation (*e.g.*, as-built diagrams, photographs, etc.) of the work and the deadlines met and (c) describe any non-compliance with any requirement of this Decree, explaining the reasons for any non-compliance and the remedial steps taken, or to be taken, to minimize such non-compliance or prevent its recurrence.

34. If Highland violates, or has reason to believe that it may violate, any requirement of this Decree, Highland shall notify the United States and the State of such violation and its likely duration, in writing, within ten Days of the Day Highland first becomes aware of the violation, with an explanation of the likely cause of the violation and the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully

explained at the time the report is due, Highland shall so state in the report. Highland shall investigate the cause of the violation and shall then submit an amended report that includes a full explanation of the cause of the violation, within 30 Days of the Day Highland becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Highland of its obligation to provide the notice required by Section XI (Force Majeure).

35. Whenever any violation of this Decree or of any permits affecting Highland's performance under this Decree or any other event affecting Highland's performance under this Decree, or the performance of its SSCS, may pose an immediate threat to the public health or welfare or the environment, Highland shall notify EPA and the State by electronic means, as provided in Section XVI (Notices), as soon as possible, but no later than 24 hours after Highland first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

36. All reports shall be submitted to the persons designated in Section XVI (Notices).

37. Each report submitted by Highland under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I 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.

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

39. The reporting requirements of this Decree do not relieve Highland of any reporting obligations required by the CWA or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

IX. PUBLIC WEBSITE

41. Within 30 Days from the Effective Date, Highland shall have an operable Website for the posting of Decree Deliverables and the Consent Decree. EPA and IDEM shall have an opportunity to review and comment on the structure and content of the Website within 30 days of the Date of Lodging of this Decree. Highland shall announce the availability of the Website by a press release, and the Town of Highland's official homepage, www.highland.in.gov, shall include a link to the Website. The Website may be a part of Highland's website on the Town of Highland's official website. All posted Deliverables shall be readily accessible, electronically searchable, and accurately labeled. The Website shall include the following:

a. Consent Decree. Highland shall post on the Website an electronic copy of the entered Consent Decree.

b. Consent Decree Submissions. Highland shall post to the Website all Deliverables that have been reviewed and approved by EPA and the State and the Semi-Annual Reports required by Section VIII (Reporting Requirements). Deliverables shall be posted within thirty days of approval.

c. SSO Public Notification. Within 30 Days of the Effective Date of this Decree, Highland shall post on its Website a completed State Form 48373 after each SSO that

occurs. These reports shall be posted on the Website within twenty-four (24) hours of submitting to IDEM State Form 48373. Once posted, Highland shall not remove any of the State Forms from the website; if Highland needs to amend a report, it will post the original report and any amendments to that report.

d. Other Public Presentations and Education Materials. Highland shall post to its Website materials used in presentations to the public related to the work required under this Consent Decree and other relevant educational materials on SSOs identified by Highland, the State, or EPA.

X. STIPULATED PENALTIES

42. Highland shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

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

44. The following stipulated penalties shall accrue per violation per Day for failing to meet any of the requirements set forth in Paragraphs 17 (SSO Remedial Measures Plan); 18 (Post-Remedial Measures Monitoring Plan); 20 (Supplemental SSO Remedial Measures Plan); 23 (SSO Flow Monitors); 26 (Implementing a CMOM Plan and Overflow Emergency Response Plan); 32 (Permits); and 41 (Public Website and other posting requirements):

<u>Period of noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1 st through 30 th day of violation	\$1,500
31 th through 60 th day of violation	\$2,000
61 st day and beyond	\$3,000

45.

a. SSOs. The following stipulated penalties shall accrue per violation per

Day that an SSO occurs from any location in Highland's SSCS, as prohibited by Paragraph 16:

Volume of SSO (in gallons)	<i>If in compliance with the SSO Remedial Measures Plan (Appendix A) and before the Completion Date of the Phase 1 Projects identified in Appendix A (Table A.1, Detailed Implementation Schedule)</i>	<i>If not in compliance with the SSO Remedial Measures Plan (Appendix A) or after the Completion Date of the Phase 1 Projects identified in Appendix A (Table A.1, Detailed Implementation Schedule)</i>
500 or less	\$500	\$1,000
501 to 10,000	\$2,000	\$4,000
Greater than 10,000	\$4,000	\$8,000

b. Failure to add SSO locations. The following stipulated penalties shall

accrue for each Day that Highland fails to report a new SSO Location in accordance with Appendix B: \$3,000 per Day per violation.

46. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for the failure to submit or late submission of the reports required by the reporting requirements of Paragraphs 19 (Post-Remedial Measures Monitoring Report); 24 (Reporting all SSOs); 25 (Semi-Annual Overflow Logs); 33 (Semi-Annual Report); 34 (Reporting non-compliance); 35 (Reporting immediate threats to public health) and Part 2 of Appendix B (Procedure to Modify the List of SSO Locations):

<u>Period of noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1 st through 30 th day of continuous violation	\$250
31 th through 60 th day of continuous violation	\$500
After 60 days of continuous violations	\$1,000

47. The following stipulated penalties shall accrue per violation per Day for each violation of this Consent Decree not included in Paragraphs 44-46:

<u>Period of noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1 st through 30 th day of violation	\$100
31 th through 60 th day of violation	\$200
61 st day and beyond	\$500

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

49. Highland shall pay stipulated penalties to the United States and the State within 60 Days of a written demand by either Plaintiff stating the alleged violation(s); the duration of each violation(s); and the amount of the stipulated penalties due. Nothing in this Consent Decree shall preclude Highland from asserting any defense it may have under the Consent Decree, the CWA, its implementing regulations, or any permit to any alleged violation of the terms of this Decree. Highland shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to the State. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

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

51. Stipulated penalties shall continue to accrue as provided in Paragraph 48, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute, or any part of the dispute, is resolved by concession of Highland, agreement by the Parties, or by a decision of EPA or the State that is not appealed to the Court, Highland shall pay accrued penalties determined to be owing, together with interest, to the United States and the State within 60 Days of the date of such concession, the effective date of the agreement, or Highland's receipt of EPA's or the State's decision or order.

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

c. If any Party appeals the District Court's decision, Highland shall pay all accrued penalties as ordered by the appellate court, or the District Court if the issue is remanded, together with interest, within 30 Days of receiving the final adjudication of the dispute.

d. Where more than one violation of this Decree is raised in a Dispute, and fewer than all of the violations are resolved by Highland's concession, agreement of the Parties, or decision or order by the United States or the State that is not appealed to the Court, then Highland shall pay the accrued stipulated penalties associated with the resolved violations, together with interest, to the United States and the State, within 30 Days of such resolution.

52. Highland shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraphs 14 and 15, except that the

transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

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

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

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

XI. FORCE MAJEURE

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

exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure 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 Highland’s financial inability to perform any obligation under this Decree.

57. If any event occurs or has occurred that may delay the performance of any obligation under this Decree, whether or not caused by a force majeure event, Highland shall provide notice by electronic means to EPA and the State within 72 hours of when Highland first knew that the event might cause a delay. Within 10 days thereafter, Highland shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Highland’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Highland, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Highland shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Highland from asserting any claim of force majeure for that event for the period of time of such failure to comply, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure and whether Highland has exercised its best efforts under Paragraph 56, EPA may, in its unreviewable discretion, excuse in writing the Highland’s failure to submit timely or complete notices under this Paragraph. Highland shall be deemed to know of any circumstance of which

Highland, any entity controlled by Highland, or Highland's contractors knew or should have known.

58. If EPA and the State agree with Highland that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Decree that are affected by the force majeure event will be extended by EPA and the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA and the State will notify Highland in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

59. If EPA and the State do not agree with Highland that the delay or anticipated delay has been or will be caused by a force majeure event, EPA and the State will, within 60 Days, notify Highland in writing of their decision and the bases supporting its decision.

60. If Highland elects to invoke the informal or formal dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA and the State's notice. In any such proceeding, Highland 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 Highland complied with the requirements of Paragraphs 56 and 57. If Highland carries this burden, the delay at issue shall be deemed not to be a violation by Highland of the affected obligation of this Decree identified to EPA, the State, and the Court.

XII. DISPUTE RESOLUTION

61. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree. A dispute shall be considered to have arisen when one Party sends the other Parties a written Notice of Dispute.

62. If Plaintiffs require additional information about any dispute covered by this Section, Plaintiffs may, in their full discretion, attempt to obtain such information from Highland through information requests prior to utilizing other legal authority otherwise available to Plaintiffs.

63. Informal Dispute Resolution. Any dispute between the United States or the State and Highland subject to Dispute Resolution under this Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when one Party sends the other Parties a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 45 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 the State shall be considered binding unless, within 15 Days after the conclusion of the informal negotiation period, Highland invokes formal dispute resolution procedures as set forth below.

64. Formal Dispute Resolution.

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

position and any supporting documentation relied upon by Highland.

b. The United States and the State shall serve their Statement(s) of Position within 30 Days of receipt of Highland's Statement of Position. The United States and the State's Statement(s) of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the United States and the State. The United States and the State's Statement(s) of Position shall be binding on Highland, unless Highland files a motion for judicial review of the dispute in accordance with the following Paragraph.

c. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, EPA may allow submission of supplemental materials by any party to the dispute.

65. Judicial Review. Highland may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XVI (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States and the State's Statement(s) of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Highland'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 Decree.

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

67. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Decree, in any dispute brought under Paragraph 64 (Formal Dispute Resolution) pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA and IDEM under this Decree; the adequacy of the performance of work undertaken pursuant to this Decree; and all other disputes that are accorded review on the administrative record and for which state and federal agencies are afforded deference under applicable principles of administrative law, Highland shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided this Decree, in any other dispute brought under Paragraph 64 (Formal Dispute Resolution), Highland shall bear the burden of demonstrating that its position complies with this Decree.

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

XIII. INFORMATION COLLECTION AND RETENTION

69. Until termination of this Consent Decree, the United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry

into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials to:

- a. monitor the progress of activities required under this Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Decree;
- c. obtain samples and, upon request, splits of any samples taken by Highland or its contractors, or consultants;
- d. obtain copies of documentary evidence, including copies of photographs and similar data; and
- e. assess Highland's compliance with this Decree.

70. Upon request, Highland shall provide EPA and the State or their authorized representative splits of any samples taken by Highland. Upon request, EPA and the State shall provide Highland splits of any samples taken by EPA or the State.

71. From the Date of Lodging until two years after the termination of this Decree, Highland shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, that relate to Highland's performance of its obligations under this Decree. Such records shall include relevant modeling inputs and outputs, flow data, rainfall data, inspection records, cleaning records, construction plans or as-built drawings, specifications, construction contracts, final payments and notices of completion, and all reports or plans, in addition to records or documents, as specified by either of the Plaintiffs from time to time, that are necessary to evaluate Highland's performance of its

obligations under this Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Highland shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

72. At the conclusion of the information-retention period provided in the preceding Paragraph, Highland shall notify the United States and the State 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 State, Highland shall deliver any such documents, records, or other information to EPA or the State.

73. Highland shall not assert any claim of privilege over factual information or data related to Highland's compliance with any condition or requirement of the Clean Water Act or this Consent Decree. Highland may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by State or federal law. If Highland asserts such a privilege, it shall provide Plaintiffs 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 Highland.

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

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

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

76. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged against Highland (i) in the Complaint filed in this action, and (ii) under the administrative order issued by the EPA to Highland on August 10, 2011 under docket number V-W-11-AO-07, through the Date of Lodging of this Decree.

77. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Decree. This Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other federal or state laws, regulations, or permit conditions. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Highland's SSCS, whether related to the violations addressed in this Decree or otherwise.

78. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to Highland's violations, Highland shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by

the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 76.

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

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

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

XV. COSTS

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

XVI. NOTICES

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

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-3308/4

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-3308/4

As to EPA by email: r5weca@epa.gov & middleton.keith@epa.gov
(with any attachments as a text searchable pdf)

As to EPA by mail: Chief, Water Enforcement and Compliance
Assurance Branch (WC-15J)
U.S. Environmental Protection Agency, Region V
77 W. Jackson Blvd.
Chicago, IL 60604

As to the State: Chief, Environmental Section
Office of the Attorney General
Indiana Government Center South, 5th Floor
402 West Washington St.
Indianapolis, IN 46204

As to IDEM: Chief, Compliance Branch
Office of Water Quality, Mail Code 65-40
Indiana Department of Environmental Management
100 N. Senate Ave.
Indianapolis, IN 46204-2251

and

Office of Legal Counsel
Mail Code 60-01
100 North Senate Street
Indianapolis, IN 46204-2251
badmire@idem.in.gov
Phone: (317) 232-8584

As to Highland:

President, Highland Sanitary Board
3333 Ridge Road
Highland, IN

and

Susan M. Franzetti
Nijman Franzetti LLP
10 N. LaSalle St., Suite 3600
Chicago, IL 60603
sf@nijmanfranzetti.com

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

85. All electronic submittals made to EPA are preferred and must be in Portable Document Format (“pdf”) or similar format that is text searchable. If data are submitted in electronic spreadsheet form, Highland will provide the data and corresponding information in editable Excel format and not in image format. If Excel format is not available, then the electronic format should allow for data to be used in calculations by a standard spreadsheet program similar to Excel. The subject of the email correspondence must include the Sanitary District of Highland, the name of the deliverable, and the Court’s case number. If Highland is unable to submit a notification, submission, or communication to EPA by email, it shall provide the notification, submission, or communication to the mailing addresses listed above in

Paragraph 83 and include electronic format of the notification, submission, or communication on physical media such as compact disk, flash drive, or a similar storage device.

XVII. EFFECTIVE DATE

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

XVIII. RETENTION OF JURISDICTION

87. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XII (Dispute Resolution) and XIX (Modification), respectively, or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

88. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. For the purposes of this Consent Decree, a request for extension of an implementation schedule deadline shall be considered a non-material modification provided that the extension request is related only to deadlines detailed in Appendix A and does not extend the final compliance deadline of February 1, 2033 in Paragraph 17.c. Requests to modify the final compliance deadline shall be considered material modifications. Any non-material extension request shall be effective upon review and approval by Plaintiffs and shall be served upon all the Parties.

89. 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 67, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XX. TERMINATION

90. After Highland has completed the requirements of Section VII (Compliance Requirements), has complied with all other requirements of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Decree, Highland may serve upon the United States and the State a Request for Termination, stating that Highland has satisfied those requirements, together with all necessary supporting documentation showing that the conditions for termination set forth in this Section have been met.

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

92. If the United States and the State do not agree that the Decree may be terminated, Highland may invoke Dispute Resolution under Section XII. However, Highland shall not seek Dispute Resolution of any dispute regarding termination until 90 Days after service of its Request for Termination.

93. Regardless of whether Defendant has requested termination of the Consent Decree pursuant to Paragraph 90, the United States and the State may seek the Court's approval to terminate this Consent Decree based upon the United States' and the State's determination that Defendant has met the requirements for termination in accordance with this Section.

XXI. PUBLIC PARTICIPATION

94. 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 regarding the Decree disclose facts or considerations indicating that the Decree is inappropriate, improper, or inadequate. Highland consents to entry of this Decree without further notice and agrees not to withdraw from or oppose entry of this Decree by the Court or to challenge any provision of the Decree, unless the United States notified Highland in writing that it no longer supports entry of the Decree.

XXII. SIGNATORIES/SERVICE

95. Each undersigned representative of Highland and the State of Indiana 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 legally bind the Party he or she represents to this document.

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

Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIII. INTEGRATION

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

XXIV. APPENDICES

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

“Appendix A” is Highland’s SSO Remedial Measures and Post-Remedial Measures Monitoring Plan.

“Appendix B” is the SSO Locations List and Procedure to Eliminate Subsequently Discovered SSOs.

“Appendix C” is Highland’s SSO Reporting Table.

XXV. FINAL JUDGMENT

99. Upon approval and entry of this Consent Decree by the Court, this Decree shall constitute a final judgment of the Court as to the United States, the State, and Highland. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment as to Highland under Fed. R. Civ. P. 54 and 58.

Dated and entered this _____ day of _____, 2022.

UNITED STATES DISTRICT JUDGE

The Undersigned Party enters into this Consent Decree between the United States of America, the State of Indiana, and the Sanitary District of Highland.

**FOR PLAINTIFF
UNITED STATES OF AMERICA:**

UNITED STATES DEPARTMENT OF JUSTICE

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

4/6/22
Date

/s/ Alison C. McGregor
ALISON C. MCGREGOR
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611

CLIFFORD D. JOHNSON
United States Attorney
Northern District of Indiana

SHARON JEFFERSON
Assistant United States Attorney
Northern District of Indiana

The Undersigned Party enters into this Consent Decree between the United States of America, the State of Indiana, and the Sanitary District of Highland.

**U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION 5**

ROBERT KAPLAN

Digitally signed by ROBERT
KAPLAN
Date: 2022.03.02 20:21:18 -06'00'

Date

ROBERT A. KAPLAN

Regional Counsel

U.S. Environmental Protection Agency, Region 5

Andre Daugavietis

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Daugavietis
Date: 2022.02.28 16:34:41 -06'00'

ANDRE DAUGAVIETIS

Associate Regional Counsel

U.S. Environmental Protection Agency, Region 5

Office of Regional Counsel

The Undersigned Party enters into this Consent Decree between the United States of America, the State of Indiana, and the Sanitary District of Highland.

**U.S. ENVIRONMENTAL PROTECTION
AGENCY, OFFICE OF ENFORCEMENT AND
COMPLIANCE ASSURANCE**

JOSEPH THEIS Digitally signed by JOSEPH
THEIS
Date: 2022.03.09 18:27:35 -05'00'

Date

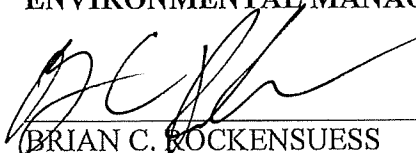
JOSEPH G. THEIS
Acting Division Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

The Undersigned Party enters into this Consent Decree between the United States of America, the State of Indiana, and the Sanitary District of Highland.

**FOR PLAINTIFF
THE STATE OF INDIANA:**


**INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

3/24/2022
Date


BRIAN C. ROCKENSUESS
Commissioner
Indiana Department of Environmental Management
100 North Senate Street
P.O. Box 6015
Indianapolis, IN 46206


Approved as to form and legality:

3/23/2022
Date


ELIZABETH ADMIRE
Attorney
Indiana Department of Environmental Management
100 North Senate Street
P.O. Box 6015
Indianapolis, IN 46206

INDIANA ATTORNEY GENERAL


March 23, 2022
Date


PATRICIA ORLOFF ERDMANN
Chief Counsel for Litigation
Office of the Indiana Attorney General
402 West Washington Street
IGCS, 5th Floor
Indianapolis, IN 46204

The Undersigned Party enters into this Consent Decree between the United States of America, the State of Indiana, and the Sanitary District of Highland.

**FOR DEFENDANT
SANITARY DISTRICT OF HIGHLAND**

4/05/2022
Date



RICHARD GARCIA
President, Highland Sanitary Board
3333 Ridge Road
Highland, IN

Appendix A

Highland's SSO Remedial Measures and Post-Remedial Measures Monitoring Plan Requirements

1.0 SSO REMEDIAL MEASURES AND IMPLEMENTATION SCHEDULE

The Sanitary District of Highland (Highland) is a separate sanitary system that originally had seven existing sanitary sewer overflow (SSO) locations in the N. 5th Street Subbasin, 41st St. Subbasin, and 81st Street Subbasin as illustrated in Figure A.1. The SSO location at Sanitary-to-Storm Sewer Cross Connect #3 (Sanitary Manhole 1098) was eliminated in April 2018 when the cross connect was plugged. The SSO location at the 81st Street Lift Station is inactive.

The SSO Remedial Measures in this Appendix are designed to eliminate the remaining SSOs in Highland's sewer system and prevent new SSOs from occurring. The occurrence of any SSO, including from the locations listed in this Appendix, is prohibited by Section 301(a) of the Clean Water Act, 33 U.S.C. § 3301(a), Title 13 of the Indiana Code, the Indiana Administrative Code, 327 Ind. Admin. Code 5-2-2, and the regulations adopted thereunder. As described below, Highland currently has five identified active SSO locations. This plan will require Highland to design and implement SSO Remedial Measures to eliminate those SSO locations as well as any others discovered during the term of this CD.

To address the remaining five SSO locations in the N. 5th Street Subbasin and the 41st Street Subbasin, Highland will construct new gravity sanitary sewers and a new N. 5th Street Lift Station and Force Main as illustrated in Figures A.2 through A.4. *See* SSO Locations in Appendix B of the CD. The SSO Remedial Measures shall be constructed in phases in accordance with the implementation schedule in Table A.1. The Phase I project will eliminate two SSO locations at (a) the N. 5th Street Lift Station and (b) Grace Place and Duluth Avenue. The Phase II project will eliminate two SSO locations at the (a) Sanitary-to-Storm Sewer Cross Connect #1 (Sanitary Manhole 1345) and (b) Sanitary-to-Storm Sewer Cross Connect #2 (Sanitary Manhole 1230). The Phase III project will eliminate the SSO location at the 41st Street Lift Station.

2.0 POST-REMEDIAL MEASURES MONITORING PLAN

The purpose of the Post-Remedial Measures Monitoring Plan is to determine whether the constructed SSO Remedial Measures have eliminated SSOs in Highland's separate sanitary system. Demonstration of SSO elimination is discussed in Section 2.3, below. The specific requirements applicable to the monitoring plan are set forth in the following sections.

2.1 SSO PERFORMANCE MONITORING

After constructing and implementing all phases of the SSO Remedial Measures described in Table A.1, Highland shall monitor rainfall volume and intensity for a 12-month period. Highland shall also collect sewer response data in the pipes upstream of the former SSO locations for a 12-month period, where local hydraulics are favorable for such an installation; otherwise an alternative location will be selected using best industry practices or standards. Such data will be used to properly validate or recalibrate the separate sewer collection system model (currently Highland's SWMM model). The SSO performance monitoring will include the following:

- Highland will monitor rainfall at six locations with tipping bucket rain gauges coinciding with the six historical rain gauge locations shown in Figure A.5. The rain gauges will be monitored continuously and will report the rainfall data at 15-minute intervals.
- As shown in Figures A.6 and A.7, post-construction flow monitors shall be located upstream of the former SSO locations and at three additional locations to monitor the dry and wet weather flow and level data.

2.2 COLLECTION SYSTEM MODEL RECALIBRATION

Highland's SWMM model or an equivalent, widely-used model platform will be used, together with best industry practices or standards, to determine whether the constructed SSO Remedial Measures have achieved the desired performance in Highland's separate sanitary system. To ensure that Highland's model is an appropriate tool for making this determination, a recalibration effort will be undertaken. Upon completion of the SSO performance monitoring described in Section 2.1 above, the following steps will be taken to recalibrate the Highland's model:

- Flow, rainfall, and SSO control data will be collected for a 12-month post-construction period as described in Section 2.1, above. Rain gauge locations will be as described in Section 2.1., above.
- Highland's model will be updated using record drawings to include all phases of the SSO Remedial Measures described in Table A.1.
- A minimum of three rainfall events will be selected for validation or, if necessary, recalibration purposes. If recalibration is necessary, an additional three events will be used for post-recalibration validation.

A final modeling analysis with a proper dry weather and wet weather calibration and validation that meets the table below (based on the CIWEM Code of Practice for the Hydraulic Modeling of Urban Drainage Systems Version 01, 2017 (previously the WaPUG Code of Practice for the Hydraulic Modeling of Sewer Systems Version 3.001 (December 2002)) for Highland's model:

Hydrograph Component	Calibration and Validation Requirement
Timing	The timing of the peaks and troughs of the hydrograph should be +/- 1 hour when comparing the modeled hydrograph to the observed flow meter hydrograph for a minimum of 67% of the calibration and validation events.
Flooding	Highland's model shall predict the location and general magnitude of any sewage-related flooding that actually occurs throughout the City's collection system.
SSO discharges	Highland's model shall predict the occurrence of an SSO from Highland's SSCS and be reasonably similar to the volume of that SSO. In applying the criteria in the previous sentence, it is recognized that the simulation of small duration and volume SSOs is generally more challenging.

Peak Flow Rate	Highland's model hydrograph shall be within -15% to +25% of the observed flow meter data for a minimum of 67% of the calibration and validation events.
Flow Volume	Highland's model hydrograph shall be within -10% to +20% of the observed flow meter data for a minimum of 67% of the calibration and validation events.

2.3 POST-REMEDIAL MEASURES MONITORING REPORT

The measure of successful completion of the SSO Remedial Measures will be demonstrating that Highland has eliminated SSOs in the collection system using the recalibrated model for the 50-year, 1-hour storm and 50-year, 24-hour storm with antecedent conditions assumed to be average warm weather conditions ("Selected Demonstration Storms"). The storms are defined in Floyd A. Huff and Hames R. Angel's *Bulletin 71, Rainfall Atlas of the Midwest, Midwestern Climate Center Research Report 92-03* published in 1992. Highland will use the most common temporal distribution for each duration as described in *Bulletin 71*, Section 4, Table 10 (the 50-year, 1-hour storm will utilize the first quartile distribution and 50-year, 24-hour storm will utilize the third quartile distribution). A SSO Post-Construction Compliance Monitoring Report shall be submitted to the United States and Indiana six months after completion of the SSO Post-Remedial Measures Monitoring Plan described in Section 2.1 above. The SSO Post-Remedial Measures Monitoring Report shall either demonstrate elimination of SSOs using the Selected Demonstration Storms or include a written plan with details on the additional operational and/or structural improvements to be made and a proposed implementation schedule for the additional operational and/or structural improvements.

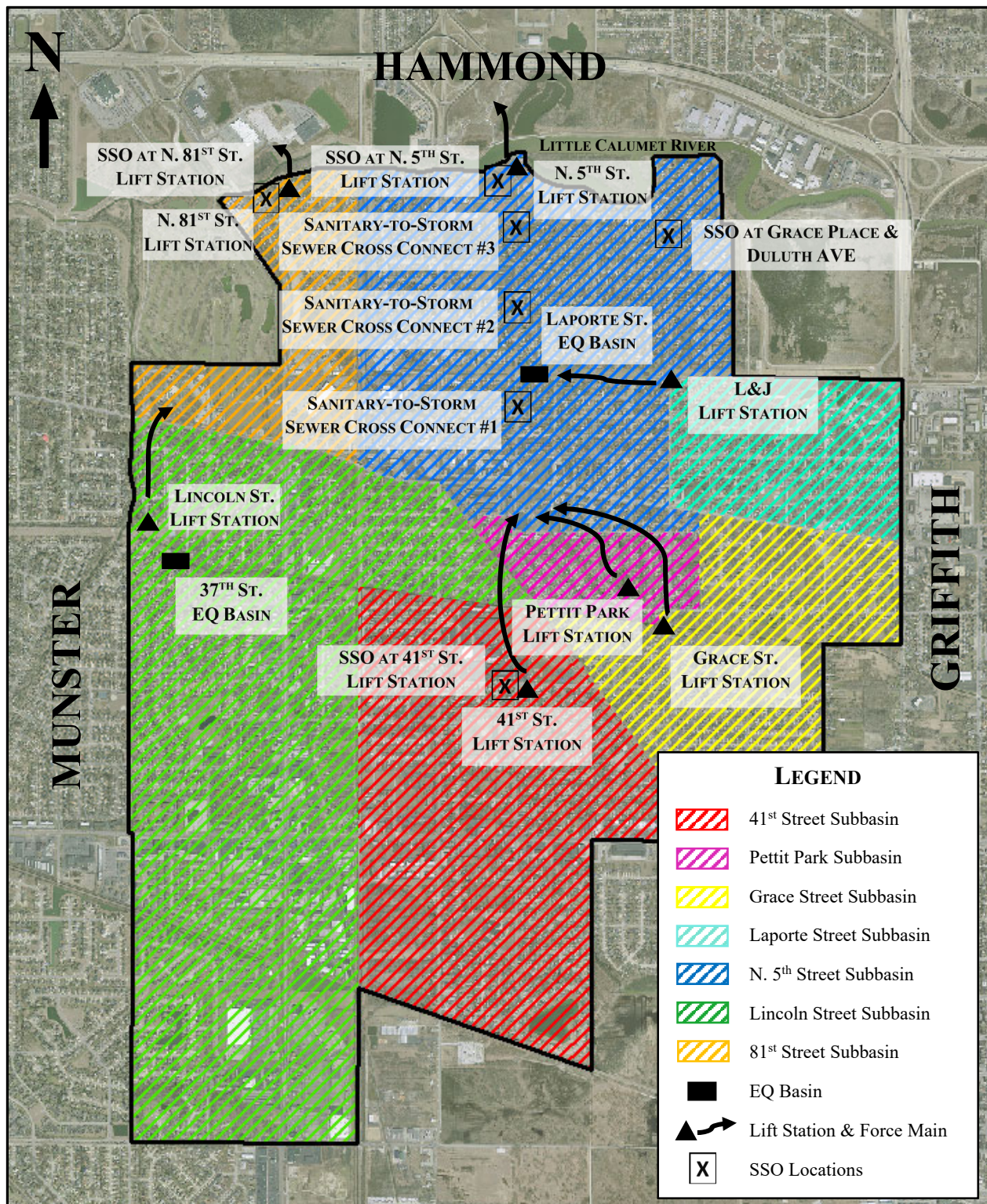


Figure A.1 Highland's Sanitary Sewer Subbasins and SSO Locations

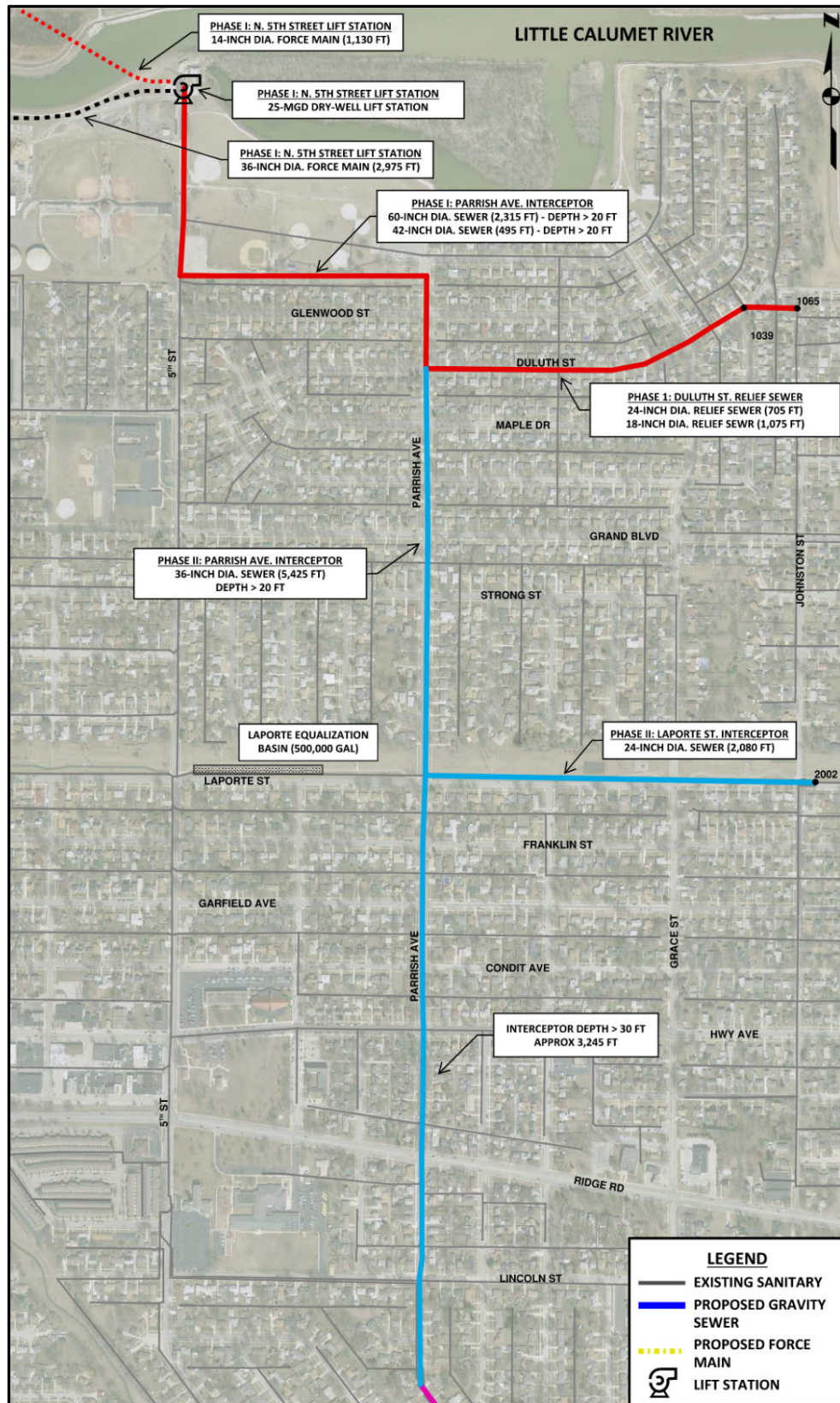


Figure A.2 Highland's SSO Remedial Project

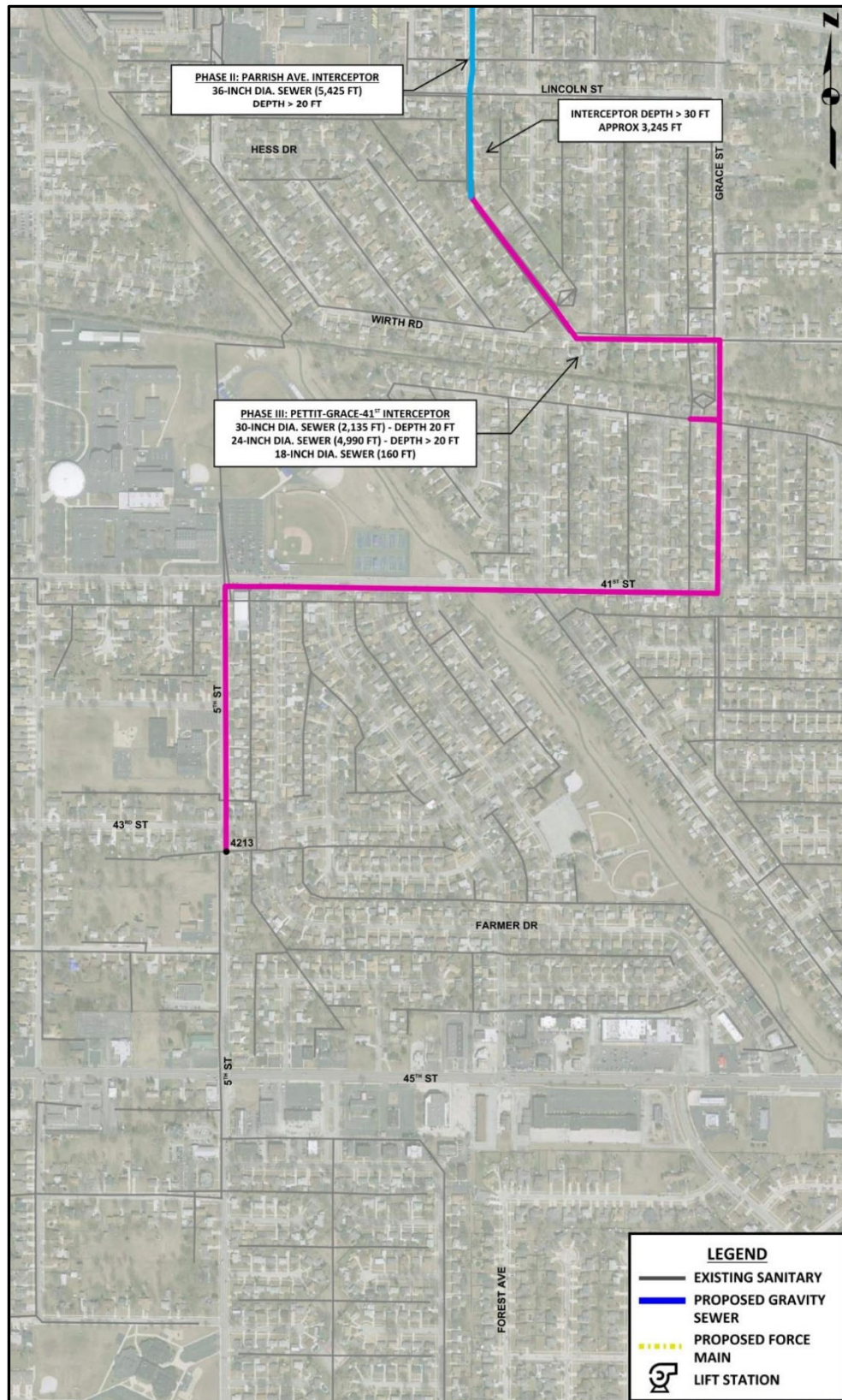


Figure A.3 Highland's SSO Remedial Project

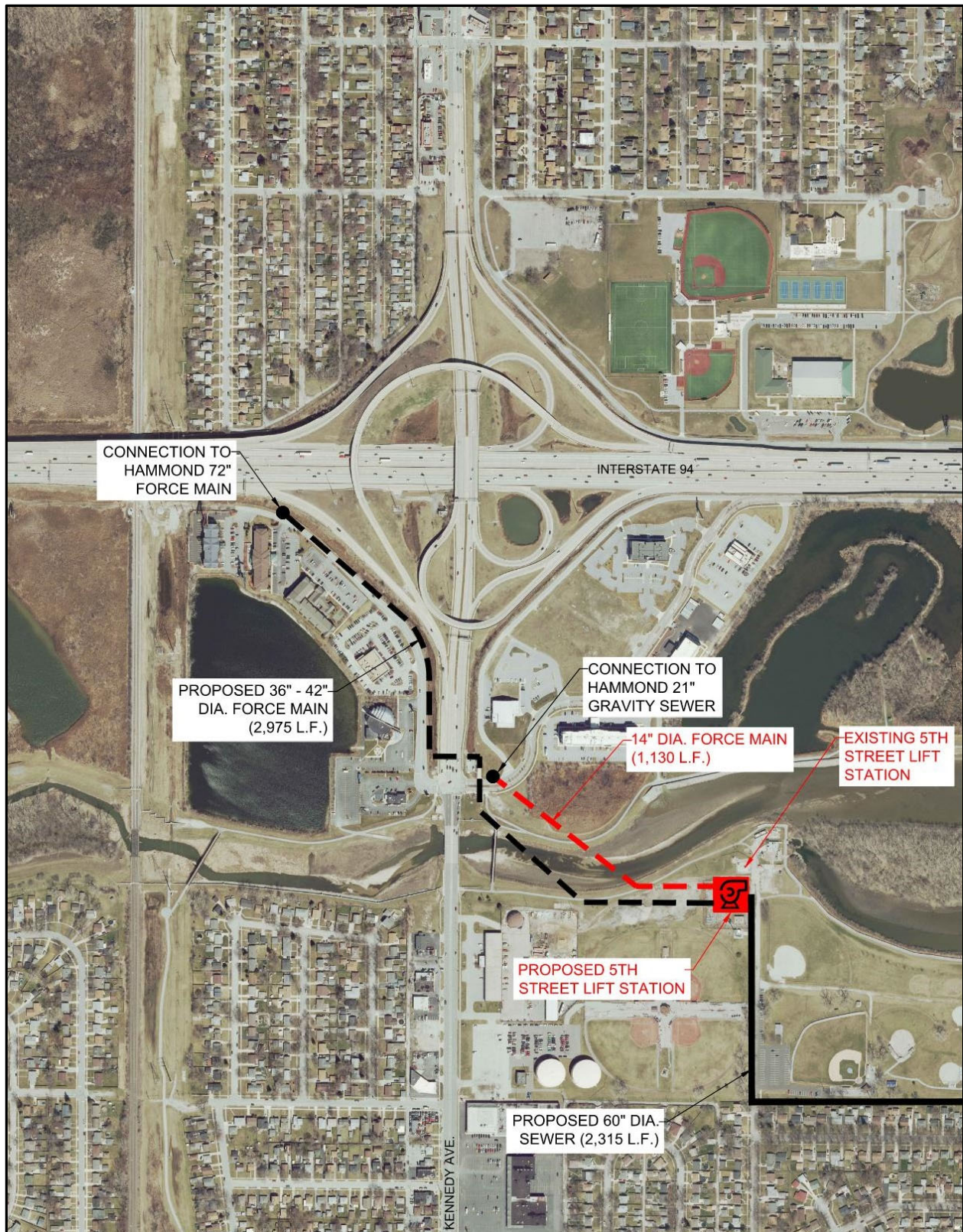


Figure A.4 Highland's SSO Remedial Project

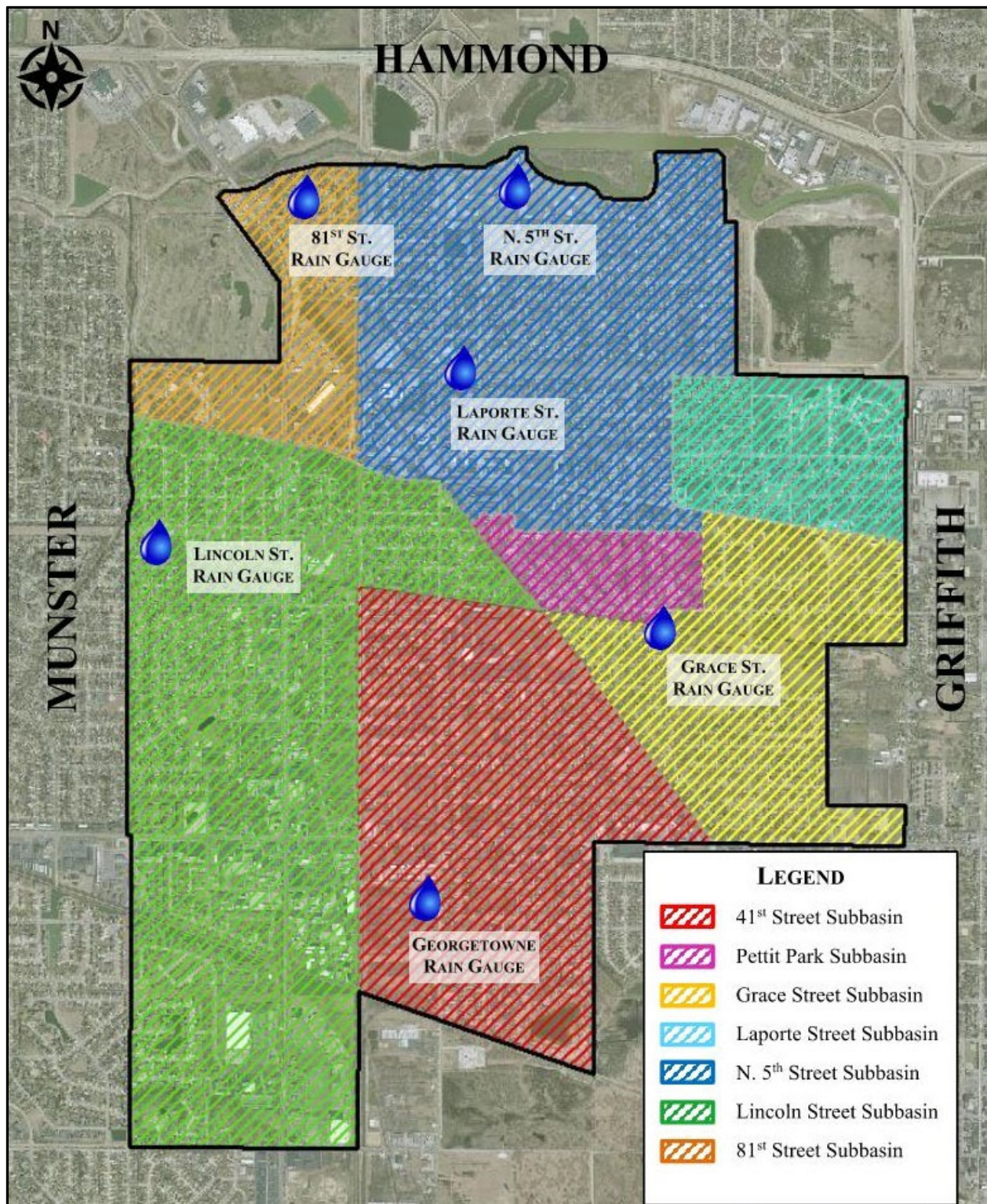


Figure A.5 Highland's Rain Gauge Locations

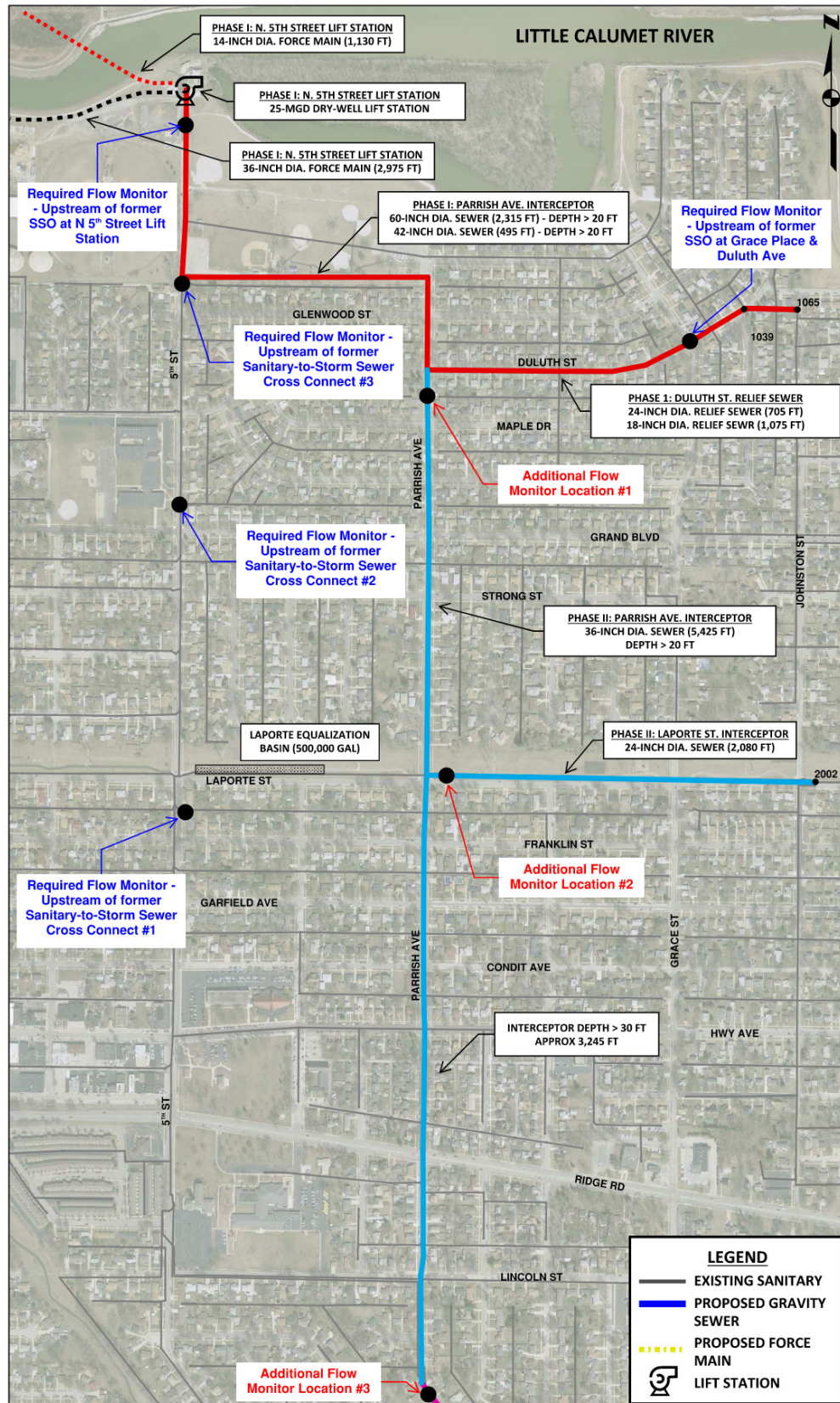


Figure A.6 Highland's Post-Construction Flow Monitor Locations

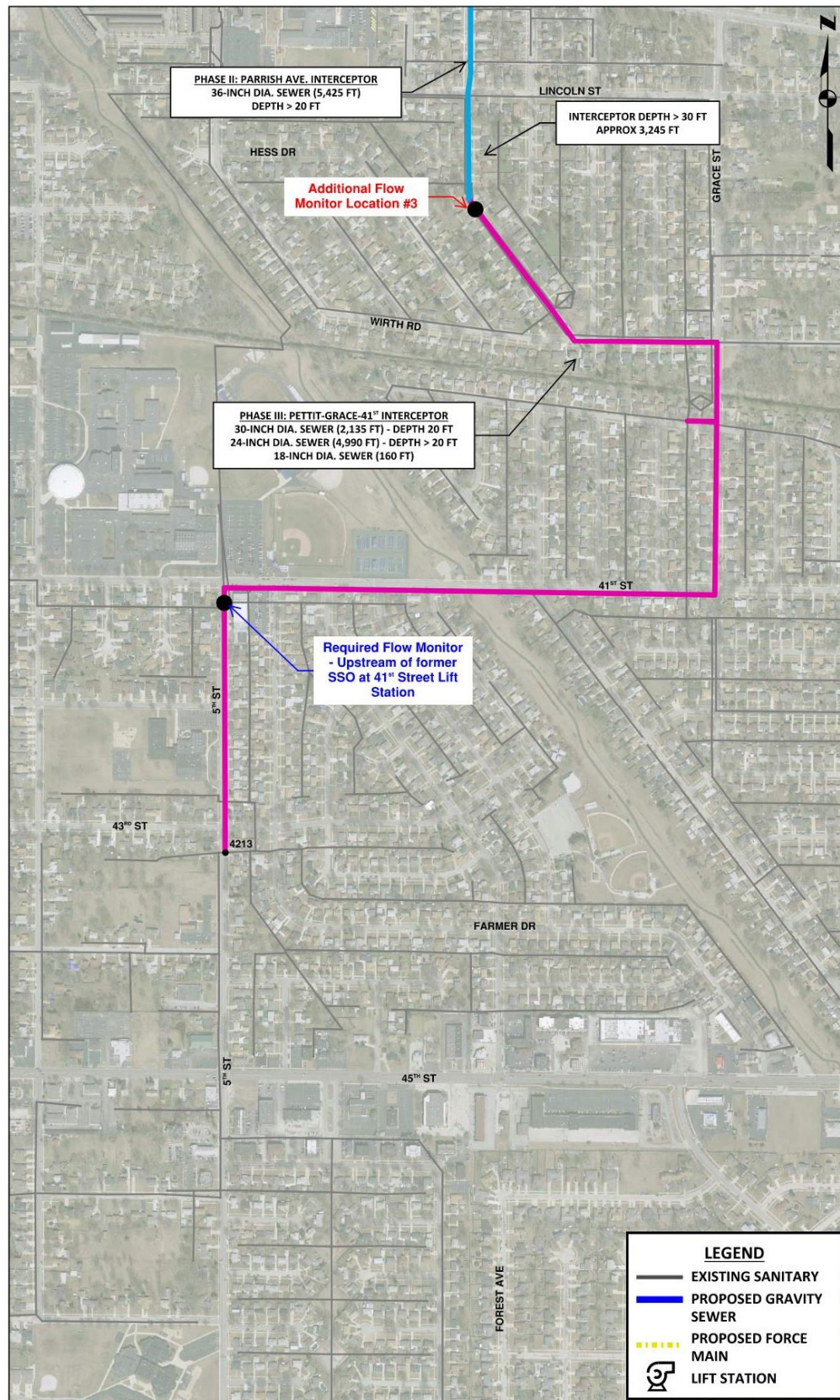


Figure A.7 Highland's Post-Construction Flow Monitor Locations

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Table A.1 SSO Remedial Measures Implementation Schedule

Project	Description	SSO Eliminated	Detailed Implementation Schedule
SSO Remedial Project - Phase I			
<p>Division A <u>Parrish Ave. Interceptor</u></p> <ul style="list-style-type: none"> • ≈ 2,325 feet of 60-inch sanitary gravity sewer • ≈ 495 feet of 42-inch sanitary gravity sewer <p><u>Duluth St. Relief Sewer</u></p> <ul style="list-style-type: none"> • ≈ 705 feet of 24-inch sanitary gravity sewer • ≈ 1,075 feet of 18-inch sanitary gravity sewer <p>Division B <u>N. 5th St. Lift Station</u></p> <ul style="list-style-type: none"> • 25 MGD pumping to Hammond & 25 MGD catastrophic emergency pumping <p>Division C <u>N. 5th St. Force Main</u></p> <ul style="list-style-type: none"> • ≈ 1,130 feet of 14-inch sanitary dry weather force main • ≈ 2,975 feet of 36 to 42-inch sanitary wet weather force main 	<p>Open cut gravity sanitary sewer construction between the N. 5th Street Interceptor and the area near Duluth Street and Grace Place. New N. 5th St. lift station and force main construction from Highland to Hammond dry and wet weather discharge locations. Existing N. 5th St. lift station decommissioning.</p>	<ul style="list-style-type: none"> • SSO at Grace Place and Duluth Ave. • SSO at N. 5th Street Lift Station 	<p>Obtain capacity certification:</p> <p>April 30, 2024</p> <p>The failure of the Hammond Sanitary District to issue a capacity certification in a timely fashion for the construction of SSO Remedial Phase 1 Projects, including the conveyance of 32.2 MGD from Highland to HSD, may serve as a basis for Highland to request an extension of the Phase 1 completion dates. Highland would need to demonstrate to EPA and IDEM that it has taken all necessary and timely steps to obtain the capacity certification in accordance with 327 IAC 3-6-4. Whether such an extension is granted shall be within EPA and IDEM's unreviewable discretion, subject only to Highland's ability to invoke the provisions of Section XII (Dispute Resolution).</p> <p>Division A</p> <p>Completion date: February 28, 2025</p> <p>Divisions B & C</p> <p>Completion date: August 31, 2027, provided Highland requests and obtains written notice from HSD that it is ready to accept 25 MGD from the new N. 5th St. Lift Station and Force Main.</p>

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SSO Remedial Project - Phase II			
<u>Parrish Ave. Interceptor</u> <ul style="list-style-type: none"> • ≈ 5,425 feet of 36-inch sanitary gravity sewer <u>LaPorte St. Interceptor</u> <ul style="list-style-type: none"> • ≈ 2,080 feet of 24-inch sanitary gravity sewer 	Trenchless and open cut gravity sanitary sewer construction on Parrish Ave. and LaPorte St. Existing L&J Lift Station decommissioning.	<ul style="list-style-type: none"> • Sanitary-to-Storm Sewer Cross Connect #1 (Sanitary Manhole 1345) • Sanitary-to-Storm Sewer Cross Connect #2 (Sanitary Manhole 1230) 	Completion Date: March 31, 2032. The failure of the Hammond Sanitary District to issue a capacity certification in a timely fashion for the construction of SSO Remedial Phase II Projects may serve as a basis for Highland to request an extension of the Phase II completion date, up to February 1, 2033. Highland would need to demonstrate to EPA and IDEM that it has taken all necessary and timely steps to obtain the capacity certification in accordance with 327 IAC 3-6-4. Whether such an extension is granted shall be within EPA and IDEM's unreviewable discretion, subject only to Highland's ability to invoke the provisions of Section XII (Dispute Resolution).
SSO Remedial Project - Phase III			
<u>Pettitt-Grace-41st St. Interceptor</u> <ul style="list-style-type: none"> • ≈ 2,135 feet of 30-inch sanitary gravity sewer • ≈ 4,990 feet of 24-inch sanitary gravity sewer • ≈ 160 feet of 18-inch sanitary gravity sewer 	Open cut gravity sanitary sewer construction along Parrish Ave., Wirth Rd., Grace St., 41 st St., and S 5 th St. Existing Grace St. Lift Station, Pettitt Park Lift Station, and 41 st St. Lift Station decommissioning.	SSO at 41 st Street Lift Station	Completion Date: February 1, 2033
Post-Construction Compliance Monitoring Program (PCCMP)			
<u>PCCMP Rainfall and Flow Metering</u>	Rainfall and sewer response data upstream of the historical SSO locations, where local hydraulics are favorable.	Not applicable	In 12 months after completion of SSO Remedial Measures Plan - Phase I, II and III
<u>PCCMP Report</u>	Summary report to confirm that the elimination using the Selected Demonstration Storms is achieved and/or propose additional improvements and schedule.	Not applicable	In 6 months after completion of PCCMP rainfall and flow metering

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Appendix B

**Highland's List of SSO Locations and
Procedure to Eliminate Subsequently Discovered
SSOs**

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Part 1. SSO Locations List

The definition of SSO Locations for purposes of this Decree include the following areas in Highland's SSCS where SSOs have occurred and continue to exist as of the date of lodging this Decree:

- a. Sanitary-to-Storm Sewer Cross Connect #1 (Sanitary Manhole 1345);
- b. Sanitary-to-Storm Sewer Cross Connect #2 (Sanitary Manhole 1230);
- c. Constructed SSO via Bypass Pump at North 5th Street Lift Station;
- d. Constructed SSO via Bypass Pump at 41st Street Lift Station; and
- e. Constructed SSO via Bypass Pump in Northeast area of North 5th Street Sub-basin, located at the intersection of Grace Place and Duluth Ave.

Part 2. Procedure for Newly Discovered SSOs

A. When Highland implements its CMOM Program under Paragraph 26 of this Consent Decree, Highland shall actively investigate its SSCS in order to identify any additional SSO locations not included in the SSO Locations List set forth in Part 1 above. Any SSO location not on the list in Part 1 above will be treated as a newly discovered SSO to which the requirements of this Appendix shall apply.

B. Newly discovered SSOs shall be categorized as either maintenance-related or capacity-related. Maintenance-related SSOs are those caused solely by blockages, sewer collapses and other physical faults within the SSCS. Maintenance-related SSOs are remediated by, for example, sewer cleaning, root removal, and/or localized sewer repairs, as appropriate. Capacity-related-SSOs are those caused in part or entirely by as-designed inadequate capacity to convey peak flows within the SSCS. Capacity-related SSOs are remediated by measures such as the provision of larger sewers or relief sewers, or the reduction of peak wet weather flows by source control measures.

C. Maintenance-related SSOs.

1. If Highland determines that a newly discovered SSO is maintenance-related, then Highland shall determine within 14 Days of its discovery whether the work necessary to eliminate the SSO can be fully implemented within 30 Days of discovery. All such work shall be implemented as expeditiously as possible.

2. If Highland determines that the work can be fully implemented within 30 Days of discovering the SSO, then Highland shall (a) perform the work to eliminate the SSO in 30 Days or less, and (b) include a section on this SSO location in its next Semi-Annual Report, submitted under Paragraph 33 of the Consent Decree, that shall include: a description of the newly discovered SSO location; the maintenance-related issue(s) that caused the SSO; how it was discovered; the date of discovery; a description of the work implemented to eliminate the SSO; and the date by which the work was completed.

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3. If Highland determines that more than 30 Days from the date of discovery of a new SSO location are required to implement the work necessary to eliminate the SSO, then within 14 Days of discovering the SSO, Highland shall submit to EPA and IDEM a notification with a schedule that eliminates the SSO as expeditiously as possible. The Highland schedule is subject to EPA and IDEM review and approval and shall include: a description of the newly discovered SSO location; the maintenance-related issue(s) causing the SSO; how it was discovered; the date of discovery; a description of the work that Highland plans to implement to eliminate the SSO; date by which all activities will be completed and the SSO eliminated; and an explanation about why the activities cannot be completed within 30 Days of Highland discovering the SSO. A pending request for review of Highland's schedule should not be treated as having been approved by EPA and IDEM, and thus Highland shall implement all necessary work as expeditiously as possible. Highland shall implement the approved plan under the approved schedule.

D. Capacity-related SSOs.

1. If Highland determines that a newly discovered SSO is capacity-related, then within 30 Days of such discovery, Highland shall notify EPA and IDEM. The notice shall include the following information: a description of the newly discovered SSO location; its configuration; how it was discovered; the date of discovery; and a description of all investigations and evaluations of the newly discovered SSO that Highland has undertaken as of the date of the notice.

2. Within 90 Days of the date of such discovery, Highland shall submit an SSO Remedial Measures Plan Addendum to EPA and IDEM for review and approval. The SSO Remedial Measures Plan Addendum shall identify remedial project(s) and the proposed schedule to eliminate the SSO. An Addendum shall alter the remedial measures identified in the original SSO Remedial Measures Plan (or a separate, pre-existing Addendum) for other SSO locations only when necessary. An Addendum shall not delay the final milestone date for any remedial measures identified in the original SSO Remedial Measures Plan or any separate, pre-existing Addenda, unless an extension of a final milestone date for any such remedial measures is requested in writing by Highland and approved by EPA and IDEM. The Addendum shall provide all of the information necessary for such Addendum and the SSO Remedial Measures Plan (and any separate, pre-existing Addenda) to together comply with the requirements of Appendix A. The final milestone for the completion of the project(s) in the Addendum shall be as expeditious as possible, and shall not be later than the final milestone date in the SSO Remedial Measures Plan, unless EPA and IDEM approve of a later date in writing. Highland shall implement the approved SSO Remedial Measures Plan Addendum under the approved schedule.

3. Highland shall report all activities undertaken to address newly discovered, capacity-related SSOs in a section in its Semi-Annual Report, submitted under Paragraph 33 of the Consent Decree, which shall for each newly discovered SSO: describe the

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progress on project(s) performed since the EPA and IDEM approved the Plan or Addendum to eliminate the SSO; describe the approved project(s) that Highland shall implement going forward to eliminate the SSO; and the timeframe for completing the remaining approved project(s).

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Appendix C

Highland’s SSO Reporting Table

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Number (tally number of SSOs or Property Backups)	Date (mm/dd/yy) and Time Release Began/Ended	Drainage Basin Location	Location of Release	Description of Area Impacted	Reason for SSO	Amount of Flow Released	Rainfall Information and Classification	Name of Receiving Waters Impacted	Did Highland Follow its Overflow Emergency Plan? (Y or N)	Actions taken to prevent, minimize, or mitigate damage, including clean-up and treatment of affected area	Actions taken or planned to prevent recurrence	Did Highland exceed its Contractual Peak Flow Rate? (Y or N)	Comments
Case specific accounting method	State Form 48373 - Box 6	Not in State Form 48373	State Form 48373 - Box 8	State Form 48373 - Box 18	State Form 48373 - Box 15 & 17	State Form 48373 - Box 10	Typically, Highland has added this information in Box 17 of the State Form 48373	State Form 48373 - Box 18	Not in State Form 48373	State Form 48373 - Box 20	State Form 48373 - Box 21	Not in State Form 48373	Catch-all section that would be helpful if any of the other boxes require further explanation
Example #1 - SSO	Ex. 6-15-2015 to 6-16-2015 2:30 PM to 11:59 PM	5th Street Basin	MH's 1345 and 1230 all on 5th St Interceptor	At 2 Constructed Overflows out of 5th St San Swr into 5th St Stm Swr	Rainfall, Excessive I/I, Under Capacity Sewer	1,456,470 gal	10 day, 1.2 yr to 10 day, 2.9 yr (4.37 to 5.14 inches Rainfall)	Little Calumet River	Yes	Followed OEP; placed signs around the SSO area alerting the public	Development of SSO Remedial Measure Plan	Yes	
Example #2 - SSO	Ex 6-15-2015 to 6-16-2015 7:30 PM to 9:00 AM	5th Street Basin	MH 1098 on 5th St Interceptor	At 1 Constructed Overflow out of 5th St San Swr into 5th St Stm Swr	Rainfall, Excessive I/I, Under Capacity Sewer	25,702 gal	10 day, 1.2 yr to 10 day, 2.9 yr (4.37 to 5.14 inches Rainfall)	Little Calumet River	Yes	Followed OEP; placed signs around the SSO area alerting the public	Development of SSO Remedial Measure Plan	Yes	