

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

and

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Plaintiffs,

v.

CAPITAL REGION WATER

and

THE CITY OF HARRISBURG, PA,

Defendants.

Civil Action No. 1:15-cv-00291-CCC

**MODIFICATION TO PARTIAL CONSENT DECREE**

## TABLE OF CONTENTS

I.	JURISDICTION AND VENUE .....	7
II.	PARTIES BOUND .....	8
III.	PURPOSE .....	9
IV.	DEFINITIONS.....	10
V.	COMPLIANCE MEASURES .....	18
	A. PERMANENT INJUNCTION .....	18
	B. NINE MINIMUM CONTROLS.....	18
	C. MINIMUM CONTROL MEASURES – STORMWATER DISCHARGES .....	26
	D. LONG TERM CONTROL PLAN .....	26
	E. SEPARATE SANITARY SEWER COMPLIANCE.....	34
	F. ONGOING CONSTRUCTION / EARLY ACTION PROJECTS .....	37
	G. GENERAL COMPLIANCE.....	39
VI.	REVIEW AND APPROVAL OF DELIVERABLES .....	41
VII.	REPORTING REQUIREMENTS .....	44
	A. REPORTS .....	44
	B. CERTIFICATION AND ADMISSIBILITY .....	48
VIII.	FUNDING.....	49
IX.	CIVIL PENALTIES.....	49
X.	STIPULATED PENALTIES .....	49
XI.	FORCE MAJEURE .....	55
XII.	DISPUTE RESOLUTION .....	58
XIII.	EFFECT OF SETTLEMENT .....	60
XIV.	NOT A PERMIT.....	62
XV.	INFORMATION COLLECTION AND RETENTION .....	63

XVI. NOTICES AND SUBMISSIONS .....	65
XVII. EFFECTIVE DATE.....	68
XVIII. RETENTION OF JURISDICTION.....	68
XIX. MODIFICATION .....	69
XX. TERMINATION.....	69
XXI. PUBLIC PARTICIPATION .....	70
XXII. SIGNATORIES/SERVICE.....	71
XXIII. COSTS OF SUIT .....	71
XXIV. INTEGRATION/APPENDICES .....	71
XXV. FINAL JUDGMENT .....	72
APPENDIX A.....	- 1 -
APPENDIX B.....	- 3 -
APPENDIX C .....	- 8 -

WHEREAS, Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and Plaintiff Commonwealth of Pennsylvania Department of Environmental Protection (“PADEP”), jointly filed a Complaint in this matter on February 10, 2015 against Defendants Capital Region Water, (“CRW”) and the City of Harrisburg, Pennsylvania (“City”) (collectively, “Defendants”) seeking injunctive relief and civil penalties, and alleging, *inter alia*, that CRW and the City violated and CRW continues to violate the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251-1387, and certain terms and conditions of the National Pollutant Discharge Elimination System permit No. PA 0027197 (“NPDES Permit”) issued to CRW and relating to the municipal wastewater treatment plant and the conveyance system owned by CRW and formerly operated by the City, and the collection system formerly owned and operated by the City. The Complaint further alleges that the City violated the CWA and certain terms and conditions of the applicable stormwater National Pollutant Discharge Elimination System permit for the municipal separate storm sewer system (“MS4”);

WHEREAS, CRW, formerly known as The Harrisburg Authority, is a municipal authority organized under the Municipal Authorities Act, as amended, 53 Pa. Cons. Stat. Ann. §§ 5601-5623, that owns a publicly owned treatment works (“POTW”) which includes a treatment plant known as the Capital Region Water Advanced Wastewater Treatment Facility (“AWTF”) and a conveyance system (“Conveyance System”) which includes interceptors and pump stations that convey wastewater from the collection system to the AWTF.

WHEREAS, at all times relevant herein prior to November 4, 2013, the City operated and maintained the AWTF and the Conveyance System.

WHEREAS, the City and CRW entered into an agreement to transition operation and maintenance of the AWTF and the Conveyance System from the City to CRW on November 4, 2013 (“Transition Agreement”). As a result of the Transition Agreement, commencing on November 4, 2013, CRW owns, operates, and maintains the AWTF and Conveyance System;

WHEREAS, at all times relevant herein prior to December 4, 2013, the City owned, operated, and maintained a collection system (“Collection System”) that collects combined storm water and wastewater from residential, commercial and industrial sources. Certain portions of the Collection System receive combined sewage and other portions receive separate sewage;

WHEREAS, at all times relevant herein prior to December 4, 2013, the City owned and operated a small MS4, from which it was authorized to discharge and did discharge, pursuant to the applicable MS4 Permit to the Susquehanna River and its tributaries;

WHEREAS, the City and CRW entered into an agreement to transfer ownership, operation, and maintenance of the Collection System and MS4 from the City to CRW on December 4, 2013 (“Transfer Agreement”). As a result of the Transfer Agreement, commencing on December 4, 2013, CRW owns, operates, and maintains the Collection System and MS4.

WHEREAS, the City and CRW entered into an Intergovernmental Cooperation Agreement to Facilitate and Assist in Environmental Compliance on October 1, 2014 to secure CRW’s legal authority and responsibility for operating and maintaining all portions of the Harrisburg Sewer System and the MS4.

WHEREAS, the AWTF, Conveyance System, and Collection System are authorized to discharge pollutants in accordance with CRW’s NPDES Permit into the Susquehanna River and Paxton Creek in Susquehanna Watershed 7-a, which are located within the jurisdiction of the U.S. District Court for the Middle District of Pennsylvania;

WHEREAS, in January 2006, the City prepared and submitted to PADEP a Long Term Control Plan (“LTCP”) with the goal of achieving Commonwealth water quality standards in accordance with the schedule therein, but the LTCP was not implemented.

WHEREAS, on December 29, 2010, EPA established the Chesapeake Bay Total Maximum Daily Load (“TMDL”) regarding discharges, including from CRW, which cause or contribute to impairments resulting from excess nutrients and sediment in Chesapeake Bay.

WHEREAS, in 2010 and 2012, EPA and PADEP conducted joint inspections of the Combined Sewer System and MS4 to determine Defendants’ compliance with the NPDES Permit and applicable MS4 Permit requirements. Based on information developed by EPA and PADEP during the joint inspections, other PADEP inspections, and through further investigation including, *inter alia*, the review of required reporting and responses to Section 308 Information Requirements, EPA and PADEP identified various violations by Defendants of the NPDES Permit requirements for the Combined Sewer System and MS4, including but not limited to: dry weather overflows from CSOs, failure to adequately implement the Nine Minimum Controls (“NMCs”) in the Combined Sewer System and Minimum Control Measures (“MCMs”) in the MS4, exceedances of effluent limitations at the AWTF, separate sanitary sewer overflows (“SSOs”) from the separate portions of the Collection System, and failure to implement the schedule for Biological Nutrient Removal (“BNR”) set forth in the NPDES Permit. EPA and PADEP have further determined that CRW’s LTCP, as presently drafted, and as revised, is inadequate to comply with EPA’s 1994 CSO Policy (“CSO Policy”), adopted by reference into Section 402(q) of the CWA, 33 U.S.C. § 1342(q);

WHEREAS, a period of negotiations followed and on August 24, 2015, the Court entered a Partial Consent Decree (“PCD”) between EPA, PADEP, the City of Harrisburg and CRW. The

PCD fully resolved claims against the City due to the City's financial distress, and partially resolved claims against CRW for NPDES permit violations related to CSO discharges, effluent limitations, BNR, and stormwater discharges. At the time the PCD was entered, CRW owned and operated the Harrisburg AWTF and the MS4 system. The major provisions of the PCD included: (1) CRW's implementation of substantial injunctive relief, including development of an NMC Plan; BNR upgrades and purchase of credits in the interim; system assessment, characterization and modeling; and development of an LTCP; and, (2) for the City, cooperation with CRW in enacting any necessary regulatory changes to enable CRW to operate the systems.

WHEREAS, the intent of the PCD was to allow CRW sufficient time to craft an approvable LTCP which would result in entry of a final consent decree; however, the inherited system was so underserved that CRW needed additional time to provide basic maintenance of the system in order to assess the baseline condition of the system. Any potential civil penalties owed by CRW will be deferred until such time as a final consent decree is entered.

WHEREAS, the PCD requires CRW to submit for review and approval a revised and updated LTCP that conforms to the requirements of EPA's CSO Policy and Guidance for Long-Term Control Plan, as well as additional guidance on Green Infrastructure and Integrated Planning.

WHEREAS, CRW submitted a Combined Sewer System Characterization Report in February 2018, including as Appendix E its CSO Activation Monitoring Pilot (CAMP) Study Evaluation Report, which evaluated the feasibility of piloting specified technologies to monitor CSO activation.

WHEREAS, CRW submitted a revised LTCP on March 29, 2018. EPA responded by letter in July 2018, identifying a number of deficiencies in the revised LTCP, providing

comments on those deficiencies, and disapproving the submission. CRW provided subsequent submissions in August and November 2018, to which EPA responded in July 2019.

WHEREAS, correspondence and meetings regarding the LTCP made clear that the age and condition of the system would require CRW to implement interim projects to meet the capture goals required of a LTCP.

WHEREAS, the United States and PADEP allege CRW and the City have violated and CRW continues to violate Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and Sections 3, 201, 202 and 401 of the Pennsylvania Clean Streams Law (“Clean Streams Law”), 35 Pa. Stat. Ann. §§ 691.3, 691.201, 691.202 and 691.401, by impermissibly discharging from the Collection and Conveyance Systems and AWTF to the Susquehanna River and Paxton Creek in violation of the NPDES Permit, and that the City had violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and Sections 3, 201, 202 and 401 of the Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.3, 691.201, 691.202 and 691.401, by discharging storm water into the Susquehanna River and its tributaries in violation of the applicable MS4 Permit, and that CRW continues to violate Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and Sections 3, 201, 202 and 401 of the Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.3, 691.201, 691.202 and 691.401, by discharging storm water into the Susquehanna River and its tributaries without a MS4 permit;

WHEREAS, the United States brings its claims pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. In the Complaint filed on February 10, 2015, the United States sought the imposition of civil penalties against CRW and the City, and injunctive relief against CRW, for alleged violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and terms and conditions of the NPDES permit last issued by PADEP as NPDES Permit No. PA-0027197, effective on January 1, 2010 and the applicable MS4 Permit;



WHEREAS, the United States, PADEP, CRW, and the City (“Parties”) expressly acknowledge and agree that this Consent Decree is a partial consent decree that does not resolve any claims Plaintiffs have for injunctive relief for CRW’s alleged failure to implement a LTCP meeting the requirements of the CSO Policy and CWA or civil penalties for CRW’s violations of the Clean Water Act or Clean Streams Law as alleged in the Complaint, and that this Consent Decree does not resolve any claims Plaintiffs may have for penalties or injunctive relief for violations not alleged in the Complaint filed on February 10, 2015, and that the Parties reserve all claims and defenses that they may have concerning all these matters;

WHEREAS, CRW is in the process of updating its Financial Capability Assessment,

WHEREAS, CRW submitted its Nine Minimum Control Plan, including a CSO Operation & Maintenance Manual, to Plaintiffs for review and approval in accordance with Section VI of this Consent Decree (Review and Approval of Deliverables) on August 10, 2015, and subsequently modified the Nine Minimum Control Plan in response to agency requests and submitted annual updates in 2019, 2020, and 2021;

WHEREAS, on July 22, 2020, PADEP issued to CRW Individual MS4 NPDES Permit No. PAI133524, effective August 1, 2020.

WHEREAS, on June 30, 2021, CRW completed decentralized green/gray controls including Phase 1 at South Allison Hill and Phase 2 at Fourth and Dauphin Park.

WHEREAS, on September 30, 2021, CRW completed rehabilitation and improvements to the Front Street Pump Station to increase its capacity to 60 million gallons per day, including installation of enhanced SCADA controls, to maximize flow to the AWTF.

WHEREAS, through negotiations, the Parties have agreed on a path forward to allow CRW's system sufficient time to get to baseline, which is a necessary precursor to an acceptable LTCP.

WHEREAS, this document (hereinafter "Consent Decree") is a material modification to the PCD entered on August 24, 2015.

WHEREAS, nothing in this Consent Decree will be construed as an admission by CRW or the City of violations of any provisions of the CWA, the Clean Streams Law, or of CRW's current or past NPDES permits, or of the applicable MS4 Permit;

WHEREAS, the Parties recognize, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue) below, and with the consent of the Parties, IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

#### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has supplemental jurisdiction over the Commonwealth law claims asserted by PADEP pursuant to 28 U.S.C. § 1367. This Court also has personal jurisdiction over the City and CRW. Venue is proper in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a) because the violations alleged in the Complaint are alleged to have occurred in this judicial district.

2. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

3. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Sections 301 and 309 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1319, and Sections 3, 201, 202, 401, 601, and 605 of the Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.3, 691.201, 691.202, 691.401, 691.601, and 691.605.

## **II. PARTIES BOUND**

4. This Consent Decree applies to and is binding upon the United States, PADEP, and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer, in whole or in part, of ownership, operation, or any other interest in the AWTF, the Conveyance System, the Collection System, the MS4, or any portion thereof, shall relieve CRW of its obligations to ensure that the terms of this Consent Decree are implemented, unless (i) the transferee agrees to be substituted for CRW as a Party under the Consent Decree and thus be bound by the terms thereof, and (ii) the United States and PADEP consent to relieve CRW of its obligations. The decision to refuse or to approve the substitution of the transferee for CRW shall not be subject to judicial review. In the event of any transfer, in whole or in part, of ownership, operation, or any other interest in the AWTF, the Conveyance System, the Collection System, the MS4, or any portion thereof, CRW shall: at least sixty (60) Days prior to any such transfer, provide a copy of this Consent Decree to the proposed transferee and simultaneously provide the Parties, in accordance with Section XVI of this Consent Decree (Notices and Submissions), with written notice of the prospective transfer, together with a copy

of the proposed transfer agreement and confirmation that a copy of this Consent Decree was given to the proposed transferee. CRW will condition any transfer, in whole or in part, of ownership, operation, or other interest in the AWTF, the Conveyance System, the Collection System, the MS4, or any portion thereof, upon the transferee's agreement to assumption of responsibility for successful execution of the terms and conditions of this Consent Decree. Any attempt to transfer, in whole or in part, ownership, operation, or any other interest of any portion of the AWTF, the Conveyance System, the Collection System, or the MS4 without complying with this Paragraph constitutes a violation of this Consent Decree.

6. CRW shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. CRW shall also provide a copy to each engineering, consulting, and/or contracting firm already retained to perform such work no later than thirty (30) Days after the Effective Date of this Consent Decree. CRW shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

### **III. PURPOSE**

7. The purpose of the Parties entering into this Consent Decree is to ensure that CRW undertakes measures necessary to achieve full compliance with the CWA, the regulations promulgated thereunder, including, but not limited to, 33 U.S.C. § 1342(q), and the Clean Streams Law and the regulations promulgated thereunder. The obligations in this Consent Decree, or resulting from the activities required by this Consent Decree, have the objective of causing CRW to achieve, and thereafter maintain, full compliance with the terms and conditions of the NPDES permit, the MS4 Individual Permit, the Clean Water Act, and the Clean Streams Law, as these terms are defined in Section IV (Definitions) of this Consent Decree.

#### IV. DEFINITIONS

8. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined by the CWA, 33 U.S.C. §§ 1251-1387, by regulations promulgated pursuant to the CWA, or by the NPDES Permit shall have the meanings assigned to them by the CWA, by such regulations, or by the NPDES Permit, or, if not defined in the Clean Water Act, its regulations, or the NPDES Permit, then as defined in The Pennsylvania Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.1-691.1001 and the regulations promulgated thereunder. Whenever the following terms are used in this Consent Decree, the following definitions shall apply:

a. “Advanced Wastewater Treatment Facility” or “AWTF” shall mean the Capital Region Water Advanced Wastewater Treatment Facility owned and operated by CRW, which discharges from Outfall 001 to the Susquehanna River, and is located at 1662 South Cameron Street, Harrisburg, PA.

b. “Building/Private Property Backup” shall mean any release of wastewater from the Harrisburg Sewer System to buildings or private property that occurs when a wastewater backup occurs into a building and is caused by blockages, flow conditions, or other conditions in the Harrisburg Sewer System. A wastewater backup or release that is caused solely by conditions in a Private Lateral is not a Building/Private Property Backup for purposes of this Consent Decree.

c. “Capacity Assessment Report” shall mean the report prepared pursuant to Paragraph 30(c)(i) of the Partial Consent Decree entered in this matter on August 24, 2015. The Capacity Assessment Report was approved on December 17, 2017.

d. “City” shall mean the City of Harrisburg, a municipality and the capital city of the Commonwealth of Pennsylvania.

e. “CRW” shall mean Defendant Capital Region Water, a municipal authority created under the Pennsylvania Municipal Authorities Act, 52 Pa. C.S.A. §§ 5601-23, and located in Harrisburg, Pennsylvania.

f. “Chapter 94 Report” shall mean the annual wasteload management report that is provided to PADEP by CRW pursuant to 25 Pa. Code Chapter 94 due by March 31 of each year.

g. “Chronic” shall mean three (3) or more overflows in the past 5 years.

h. “Clean Streams Law” shall mean the Clean Streams Law of the Commonwealth of Pennsylvania found at 35 Pa. Stat. Ann. §§ 691.1-691.1001, and the regulations promulgated thereunder.

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

j. “Collection System” shall mean the municipal wastewater collection and transmission system formerly owned and operated by the City, and currently owned and operated by CRW, including sewers, manholes, and other associated appurtenances designed to collect and convey municipal sewage, wastewaters (domestic, commercial, and industrial), and stormwater to the Conveyance System.

k. “Collection System Controls” shall mean measures that reduce the volume, peak flow, or pollutant load of flows within the Collection System.

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

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

n. “Combined Sewer System” shall mean the Conveyance System and the portion of the Collection System designed to convey municipal sewage and wastewaters (domestic, commercial, and industrial) and storm water in the same system of pipes to the AWTF, and each Combined Sewer Overflow (“CSO”) Outfall.

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

p. “Conveyance System” shall mean the sewer conveyance system currently owned and operated by CRW, including the conveyances which receive both wastewater and stormwater runoff from residential, commercial and industrial and combined sewage sources. The Conveyance System includes pump stations, interceptor sewers, force main, combined sewer outfalls and associated regulators.

q. “CSO Outfall” shall mean a designated location within the Combined Sewer System from which combined sewage and storm water are discharged and which are so designated in the currently applicable NPDES Permit.

r. “CSO Event” shall mean one or more untreated overflows from the Combined Sewer System as a result of a precipitation event.

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

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

u. “Dry Weather Overflow” or “DWO” shall mean a discharge that occurs at a permitted CSO Outfall during any period of time when the hydraulic capacity of the Combined Sewer System has not been exceeded due to a precipitation event. Overflows that are caused by any reason other than exceeded hydraulic capacity of the Combined Sewer System (e.g., debris in regulator) are Dry Weather Overflows.

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

w. “Effluent Limit” shall mean an effluent limitation imposed by the NPDES Permit.

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

y. “Green Infrastructure” shall mean, for purposes of this Consent Decree, the range of stormwater control measures that use plant/soil systems, permeable pavements, or stormwater harvest and reuse, to store, infiltrate, or evapotranspire stormwater and through these measures reduce flows to the Combined Sewer System; and to separate sanitary sewers



directly tributary to the Combined Sewer System. Green Infrastructure may include, but is not limited to, bioretention and extended detention wetland areas, as well as green roofs and cisterns.

z. “Harrisburg Sewer System” shall mean the Collection System, Conveyance System, and AWTF, collectively.

aa. “Hydrologic and Hydraulic Model” or “H&H Model” shall mean the model developed pursuant to the requirements of this Consent Decree in support of Long-Term Control Plan development efforts.

bb. “Infiltration” shall mean water other than wastewater that enters the Harrisburg Sewer System, as defined by 40 C.F.R. § 35.2005(b)(20).

cc. “Inflow” shall mean water other than wastewater that enters the Harrisburg Sewer System, as defined by 40 C.F.R. § 35.2005(b)(21).

dd. “Infiltration/Inflow” and “I/I” shall mean infiltration and/or inflow without distinguishing the source.

ee. “Initial Flow Metering and Monitoring Program Plan” or “IFMMPP” shall mean the plan for a flow metering and monitoring program developed by CRW, the final version of which is to be implemented under this Consent Decree in support of Long-Term Control Plan development efforts.

ff. “Minimum Control Measures” or “MCMs” shall mean those controls identified in Section II.A.2. of the NPDES Stormwater Phase II Final Rule, 64 FR 68736, and Part C of the MS4 Individual Permit PAI133524.

gg. “MS4 Individual Permit” shall mean NPDES Individual Permit No. PAI133524 issued to CRW on July 22, 2020, effective August 1, 2020.

hh. “MS4” shall mean the Municipal Separate Storm Sewer System that is the subject of the MS4 Individual Permit, which consists of conveyances (including roads with drainage systems, municipal streets, catch basins, inlets, curbs, gutters, ditches, and storm drains) designed to collect, convey, and directly discharge storm water to Receiving Waters.

ii. “Nine Minimum Controls” or “NMCs” shall mean those controls identified in Section II.B. of the EPA’s April 19, 1994, Combined Sewer Overflow (CSO) Control Policy.

jj. “Nine Minimum Controls Plan” or “NMC Plan” shall mean a plan developed in accordance with the requirements of Section V.B of this Consent Decree (Compliance Measures). CRW has submitted an NMC Plan for review and approval.

kk. “NPDES Permit” shall mean the currently effective NPDES Permit No. PA-0027197, effective on January 1, 2010, issued to Harrisburg Authority by PADEP. This definition includes any future modifications, extensions, amendments, renewal, or reissuance of this Permit in accordance with 40 C.F.R. Part 123.

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

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

nn. “Parties” shall mean the United States, PADEP, the City, and CRW.

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

pp. “Private Lateral” shall mean pipes and any other appurtenances not owned by CRW that are used to convey wastewater from a building or buildings to the Collection System.

qq. “Receiving Water” shall mean the portion of a water body that receives or is impacted by the discharges from one or more CRW CSOs.

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

ss. “Section” shall mean a portion of this Consent Decree identified by an uppercase Roman numeral, unless the Consent Decree states that the “Section” referred to is a Section of the Clean Water Act or NPDES Permit.

tt. “Semi-Annual Report” shall mean the written status report required under Section VII (Reporting Requirements) that CRW shall submit on its progress implementing the Consent Decree for semi-annual review, which report shall incorporate the format set forth in Appendix A to this Consent Decree.

uu. “Sensitive Areas” shall mean those areas designated by PADEP, in coordination with state and federal agencies, as appropriate, Outstanding National Resource Waters, National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters with primary contact recreation, public drinking water intakes or their designated protection areas, and shellfish beds, as set forth in Section II.C.3. of the CSO Policy.

vv. “Separate Sanitary Sewer System” shall mean any portion of the Collection System designed to convey municipal sewage and wastewaters (domestic,

commercial, and industrial) to the AWTF in one system of pipes and appurtenances and storm water in in a second independent system of pipes and appurtenances.

ww. “Sewershed” shall mean a delineation of the land area contributing wastewater and/or stormwater to a single downstream point within the Conveyance System.

xx. “Source Controls” shall mean measures that reduce the volume, peak flow, or pollutant load of runoff, either before it enters the separate sanitary, storm, and combined Collection System or is re-directed to an MS4, including measures that mimic natural hydrologic processes. Source Controls shall include, *inter alia*, Green Infrastructure, as defined in this Consent Decree.

yy. “Storage Technologies” shall mean structural measures that detain flows within the Collection and/or Conveyance System and reduce peak flows prior to treatment at the AWTF.

zz. “Subparagraph” shall mean a portion of this Consent Decree that is identified by a sequential lower-case letter, a lower-case Roman numeral, or an Arabic number in parenthesis.

aaa. “Surcharge Conditions” shall mean the conditions that exist when the wastewater surface within a manhole rises above the top of the sewer, or the separate sanitary sewer is full and under pressure, rather than at atmospheric pressure and less than completely full.

bbb. “Table of Deliverables”, attached hereto as Appendix C, shall mean a list of deliverables, along with their due dates, under this Consent Decree.

ccc. “Treatment Technologies” shall mean structural measures and/or physical chemical processes that reduce the pollutant load in a CSO prior to discharge to its Receiving Water.

ddd. “Typical Year” is an approved continuous twelve-month time series of rainfall determined by a statistical evaluation of long-term rainfall patterns, including volume, frequency, duration, and intensity, to be used for LTCP development purposes.

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

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

## **V. COMPLIANCE MEASURES**

### **A. PERMANENT INJUNCTION**

9. CRW shall achieve and maintain full compliance with the terms and conditions of the NPDES Permit, the MS4 Individual Permit, the provisions of the CWA, 33 U.S.C. §§ 1281 et seq., and the Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.1-691.1001, and the rules promulgated thereunder and with the compliance program and the schedule set forth below.

### **B. NINE MINIMUM CONTROLS**

10. CRW shall implement the revised and updated Nine Minimum Controls Plan upon receipt of Plaintiffs’ approval. The NMC Plan shall evaluate and document the current level of implementation of the NMCs within the Combined Sewer System, and shall identify and update the implementation schedule for actions necessary for achieving compliance with the

CSO Policy for all NMCs. The identified actions shall be in accordance with the CSO Policy and the “Guidance for Nine Minimum Controls,” EPA 832-13-95-003, May 1995 (“NMC Guidance”). CRW shall be responsible for stipulated penalties pursuant to Paragraph 51 of this Consent Decree for failure to implement the tasks under the approved NMC Plan.

a. **Operation and Maintenance of the Conveyance and Collection**

**Systems.** CRW shall continue to implement an Operation and Maintenance Program (“O&M Program”) for the Conveyance and Collection Systems. In support of the O&M Program, CRW has prepared and must continue to maintain, update, and implement its CSO Operation & Maintenance Manual (“OMM”) for the Conveyance and Collection Systems, describing Standard Operating Procedures and Schedules for the remedial and routine operation, inspection, maintenance, and training activities it conducts in compliance with the NMCs. CRW shall continue to review and update the OMM, as necessary, to address improved system information at least once each calendar year. If changes are warranted, CRW shall submit the updated OMM to Plaintiffs at the same time CRW submits its Chapter 94 Report in accordance with Section VI (Review and Approval of Deliverables), and continuing until termination of this Consent Decree pursuant to Section XX (Termination). Following Plaintiffs’ approval of the updated Long-Term Control Plan pursuant to Paragraph 13, CRW shall revise the OMM as necessary to include long-term O&M requirements for CSO controls required by the updated Long-Term Control Plan.

i. Solids and Floatables.

As part of the NMC Plan and O&M Program, CRW shall create a program to identify and prioritize remedial work determined based on the findings of internal and visual inspections, CSO Outfall inspections, flow to the POTW, control of solid and floatable material, response to citizen complaints and service requests, hydrologic and hydraulic (“H&H”) Modeling results,

recommendations of the approved Capacity Assessment Report, and other available information, as necessary to prevent pipe failure, resolve severe hydraulic bottlenecks including bottlenecks caused by debris buildup in interceptors, reduce Infiltration/Inflow volumes, and limit river intrusion volumes. The priority in which remedial work identified through the program established pursuant to this Subparagraph is completed shall be determined through CRW's assessment of risk of failure and consequence of failure of the defects identified. All remedial work must be completed in accordance with the schedule set forth in Appendix B;

b. **Maximize Use of Storage in Collection System.** CRW shall, as part of its O&M Program described in Paragraph 10(a), above:

i. Investigate the condition and effectiveness of currently installed measures to prevent river intrusion into the Combined Sewer System (e.g., gaskets on river gates and duckbill valves attached to outfalls). Utilizing the results of the investigation and taking into account previous documentation of observed intrusion occurrences, CRW shall perform repairs, replacements, and maintenance to prevent river intrusion into the Combined Sewer System; and

ii. As part of LTCP development, continue internal investigations and hydraulic modeling to identify priority remedial work that can be conducted to maximize in-pipe storage once the study is completed (e.g., adjustment of weir heights, prevention of river intrusion into Combined Sewer System).

iii. Identify portions of the Combined Sewer System that accumulate debris, grit, and sediment, and identify appropriate frequencies for routine removal of debris, grit, and sediment from such portions of the Combined Sewer System;

iv. Repair areas identified where river intrusion occurs through cracked and damaged CSO Outfall pipes (i.e., pipes that lead from regulators to the Susquehanna River or

Paxton Creek and associated river gates), and develop a priority list and repair schedule for any necessary monitoring, repair, or replacement of any such cracked or damaged pipes.

c. **Maximization of Flow to POTW for Treatment.** CRW shall take measures in the approved NMC Plan to maximize flow in the Combined Sewer System to the AWTF.

d. **Elimination of CSOs During Dry Weather.** CRW shall take measures in the approved NMC Plan to eliminate and/or address CSOs during dry weather.

e. **Control of Solids and Floatable Material.** CRW shall operate and maintain the existing Combined Sewer System in accordance with the OMM to control solid and floatable materials discharged from all CSO Outfalls and shall have these materials removed should a visible accumulation of these materials be deposited in the Receiving Water or onto the stream bank. CRW shall conduct annual evaluations of past performance and implement corrective actions to reduce the presence of solids and floatable materials in CSO discharges and the Receiving Waters. The procedure for these evaluations shall be set forth in the OMM. Actions taken to control solid and floatable materials shall be reported as required by Section VII (Reporting Requirements) of this Consent Decree. CRW shall implement no less than the solids and floatables control technologies set forth in the NMC Guidance.

f. **Public Notification.** CRW shall implement the public notification procedures set forth in the NMC Plan and the CSO Policy, and document their implementation in Semi-Annual Reports submitted under Section VII of this Consent Decree, including the following items:

i. Within 30 Days of the Effective Date, CRW shall submit a Public Notification Plan to Plaintiffs for review and comment. CRW shall simultaneously provide a copy



of the Public Notification Plan to the City, which may provide input on the Plan. Any input from the City must be submitted to Plaintiffs and CRW within fourteen (14) Days of CRW's submission. The Public Notification Plan shall describe and specify how and when CRW will notify the public about CSO Events, including the design, location, and planned installation date of any signs, placards, monitors, or other public notification system that CRW must install pursuant to this Paragraph.

ii. CRW shall install and continuously maintain signs or placards at each CSO Outfall that notify and alert the public to avoid contact with waters near or downstream of discharging CSO Outfalls, in accordance with the Public Notification Plan. Signs or placards shall, at a minimum, be installed within ten (10) feet of each CSO Outfall point, and shall be made from durable weatherproof material. Signs or placards shall be visible to the unaided eye from both land and water at each CSO Outfall.

iii. CRW shall also install warning signs, in accordance with the Public Notification Plan, at public stream access points (e.g. boat launches, beaches) that notify and alert the public to avoid recreational contact with waters during or just after any wet weather event.

iv. To aid in notifying the public of CSO activity, CRW shall install monitors that include real-time alert/notification systems at 10 selected locations, in accordance with the Public Notification Plan. The monitors will be installed at CSO regulator locations near the diversion chamber rim of each selected CSO regulator (i.e., the chamber where the diversion weir is located). The elevation of the water surfaces in the diversion chambers will be measured by the meter, and given the known diversion weir elevations, the public and the City will be notified of possible CSO overflows whenever the elevations of the water surfaces exceed the diversion weir elevations.

v. CRW shall develop written procedures and provide the public and the City with information concerning CSO discharge occurrences and their impacts on water quality in the Receiving Water(s) in accordance with the Public Notification Plan.

vi. CRW shall distribute CSO pamphlets for education of the general public.

vii. CRW shall evaluate and document any CSO public education programs and the community's response to such programs and any follow-up plans addressing public education based on public response.

viii. CRW shall investigate and document any public involvement including any concerns expressed, and comments or suggestions made by the public concerning CSOs, and take any corrective measures warranted.

ix. CRW shall consider implementation of email and/or text message public notification systems for CSO, DWO, and Unauthorized Release events.

**g. Monitoring to Characterize CSO Impacts to Receiving Waters and the Efficacy of CSO Controls.** CRW shall use the following phased approach to characterize CSO impacts and control efficacy:

i. Prior to approval of the Post-Construction Monitoring Program prepared under Paragraph 21(k), CRW shall utilize technology (including H&H Modeling) to calculate the volume, duration, and start/stop time of all CSO discharges. CRW shall utilize visual inspections to confirm the occurrence of CSOs. CRW shall conduct visual inspections of each CSO regulator chamber and CSO Outfall within the Combined Sewer System once per Day, seven (7) Days per week. CRW shall continue to use tethered blocks and/or chalk in each regulator to detect overflow activity. Observations made by the inspector(s) shall be recorded in a consistent manner on pre-printed forms or bound logbooks, and shall include the following: name of the inspector(s), the

date and time of the inspection, status of the regulator (e.g., overflowing, block displacement or chalk wash-off since last inspection, no sign of overflow), weather conditions (including amount of rainfall, if any), and any observed maintenance issues.

ii. CRW shall implement the approved Post-Construction Monitoring Program prepared under Paragraph 21(k) following its approval by EPA.

iii. From the Date of Lodging of this Consent Decree, total daily rainfall amounts in at least five (5) minute increments shall be recorded from rain gauges located in the region. As additional rain gauges are installed as part of the Initial Flow Metering and Monitoring Program Plan, such gauges shall also be maintained and continuously monitored to measure precipitation within the Combined Sewer System drainage areas;

iv. CRW shall document the procedures used to collect and summarize data concerning the total number of CSO overflow events (both wet and dry weather) and the frequency and duration of CSOs. CSO overflow events occurring within 48 hours of the conclusion of a precipitation event shall not be presumptively characterized as wet weather overflows. CRW shall monitor and maintain a record of CSO activity, including occurrence, duration and volume for all overflow events that occur at CSO Outfalls in CRW's Combined Sewer System. CRW shall also record rainfall data during these CSO overflow events. The CSO flow monitoring data and rainfall data shall be submitted to Plaintiffs in the Semi-Annual Reports required by Section VII (Reporting Requirements) of this Consent Decree;

v. CRW has developed and calibrated an H&H Model pursuant to Paragraph 14(b), the Water Environment Federation Manual of Practice FD-17, *Prevention and Control of Sewer System Overflows*, (3d. ed.), Table 5.2, which EPA and PADEP have accepted as calibrated. CRW shall continue to utilize the calibrated H&H Model and the rainfall data to characterize CSO

discharges and report them in Semi-Annual Reports as required by Section VII of this Consent Decree. In using the calibrated model to characterize its CSO discharges, CRW shall continue to utilize rainfall data from at least six (6) continuously recording rainfall gauges appropriately located in the Harrisburg Sewer System area, and shall continue to collect and maintain rainfall data for the pendency of this consent decree. CRW shall also procure and utilize Gauge Adjusted Radar Rainfall (“GARR”) data at a one (1) virtual gauge per square kilometer spacing. After one year of such use of the H&H Model, CRW may carry out comparative model runs to evaluate the impact of eliminating GARR data or using GARR at reduced virtual gauge density (i.e., greater spacing), and if the results of this evaluation demonstrate no impact to the H&H Model characterization of CSO activation frequency and volume, CRW may submit to EPA and PADEP a detailed technical memorandum describing the analyses carried out and the results of the analyses, and may petition EPA and PADEP for approval to eliminate GARR data or reduce the GARR density procured.

11. Ongoing Review of the NMC Plan. CRW shall, no less often than annually, evaluate the efficacy of the measures implemented under the NMC Plan, as well as other measures undertaken by CRW pursuant to this Consent Decree, in achieving water quality standards in Receiving Waters. CRW shall submit to Plaintiffs for review and approval a proposed revised plan (in redline format) including an implementation schedule of any additional actions necessary to comply with the NMCs. This submission shall specify any changes to the O&M Program and whether the OMM must be updated pursuant to Paragraph 10.a. CRW shall implement these actions, upon approval by Plaintiffs, in accordance with the provisions and schedules set forth therein.

**C. MINIMUM CONTROL MEASURES – STORMWATER DISCHARGES**

12. CRW shall comply with the MS4 Individual Permit No. PAI133524 issued to CRW on July 22, 2020, effective August 1, 2020. The Stormwater Management Program to be developed as part of CRW’s MS4 Individual Permit shall set forth procedures and schedules for complete implementation of all the Minimum Control Measures and follow the schedules in the permit.

**D. LONG TERM CONTROL PLAN**

13. Long-Term Control Plan Development. By no later than December 31, 2024, CRW shall complete and submit a revised and updated Long-Term Control Plan (“LTCP”) to Plaintiffs for review and approval in accordance with the requirements of Section VI (Review and Approval of Deliverables). The updated LTCP shall conform to the requirements of the EPA’s CSO Policy; EPA’s “Guidance for Long-Term Control Plan,” EPA 832-B-95-002, September 1995; EPA’s “Greening CSO Plans: Planning and Modeling Green Infrastructure for Combined Sewer Overflow (CSO) Control,” EPA 832-R-14-001, March 2014; and EPA’s Integrated Municipal Stormwater and Wastewater Planning Approach Framework Memorandum, dated June 5, 2012. The updated LTCP shall include schedules, deadlines and timetables for remedial measures designed to meet the following goals:

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

14. Flow Metering and Monitoring Program.

a. CRW shall annually prepare and submit to PADEP for review and comment technical memoranda with data calibrated to flow volumes documenting the results and quality of the flow monitoring data as part of their Chapter 94 Report annual submission.

b. CRW shall utilize rainfall and flow monitoring data collected pursuant to the Flow Metering and Monitoring Program Plan to revise, calibrate, and validate the H&H Model of the Conveyance and Collection Systems using the EPA SWMM 5 modeling platform. The H&H Model shall specifically include the entire Conveyance System (i.e., each regulator, each CSO Outfall, each pump station, each interceptor) plus at least an additional 25 percent of the Collection System, as well as proposed GI facilities and proposed inline storage or other gray infrastructure facilities identified by CRW as needed. The hydraulic model shall extend at least two manhole-to-manhole sewer segments upstream of the locations of: Chronic Unauthorized Releases and Chronic SSOs from tributary sanitary sewers (in accordance with Paragraph 26); potential GI facilities; and proposed inline storage or other gray infrastructure facilities. The Parties understand that this effort will result in the explicit inclusion in the H&H Model of all: Conveyance System facilities; all Collection System sewers 18-inches in diameter or larger; and additional Collection System sewers identified by CRW as needed for evaluating the hydrologic impacts of potential GI and/or upstream gray infrastructure alternatives.

15. LTCP Approach and Pollutants of Concern. CRW has selected the Demonstration approach for each Receiving Water for its LTCP Alternative Evaluation. Consistent with EPA's "Guidance for Long-Term Control Plan," EPA 832-B-95-002, September 1995, the following pollutants of concern have been identified for each Receiving Water:

**Paxton Creek:** Bacteria, Dissolved Oxygen, Biochemical Oxygen Demand (“BOD”),  
Total Suspended Solids (“TSS”), Nitrogen, and Phosphorous

**Susquehanna River:** Bacteria, TSS, Nitrogen, and Phosphorous

If the list of pollutants of concern needs to be modified, CRW shall review existing water quality data and recent PADEP Clean Water Act Section 303(d) listings to identify pollutants of concern for each Receiving Water. Even if a Receiving Water has not been formally listed as in non-compliance with its water quality standards and designated uses, if available data indicates such impairment exists, CRW shall consider the related pollutants to be pollutants of concern. Where one pollutant of concern can be shown to be consistently more protective than another pollutant of concern for all feasible CSO controls, the most protective parameter may be utilized. CRW shall submit any proposed modification to EPA and PADEP in accordance with Section XVI (Notices and Submissions).

16. Water Quality Modeling Plan. CRW has selected the Demonstration Approach in one or more Receiving Waters. By June 10, 2022, CRW shall submit to EPA and PADEP an updated Water Quality Model Plan for review and approval pursuant to Section VI (Review and Approval of Deliverables), and shall implement the approved Water Quality Model Plan in accordance with the schedule included therein. For each water body in which the Demonstration Approach is to be used, the Water Quality Model Plan shall address:

- a. Water quality modeling software to be employed;
- b. Model configuration, including reaches to be modeled and segmentation and boundary conditions;
- c. Calibration and validation, including events and data to be employed, quantitative and qualitative calibration criteria, and utilization of H&H Model outputs;

d. Use of the Water Quality Model to evaluate Typical Year in-stream conditions for each identified pollutant of concern;

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

17. Financial Capability Assessment. Within six months of the Effective Date, CRW shall submit to Plaintiffs for review and comment a Financial Capability Assessment carried out in accordance with EPA’s “Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development” (EPA 832-B-97-004), including information on sewer rate setting, definition of the service population of the Harrisburg Sewer System, and median household income of the service population.

18. Sensitive Areas/Priority Areas. Within thirty (30) Days of the Effective Date, CRW shall submit to Plaintiffs for review and approval in accordance with the requirements of Section VI (Review and Approval of Deliverables) a report or technical memorandum that addresses the topics of Sensitive Areas and any additional areas that, while not Sensitive Areas, have been identified as priorities by CRW (“Priority Areas”) in the Harrisburg Receiving Waters. CRW shall carry out adequate and appropriate investigation of each type of Sensitive Area, including inquiries of appropriate state and federal agencies, and shall include detailed documentation of those efforts.

19. Alternatives Analysis. As part of the LTCP, pursuant to Paragraph 13 above, by March 31, 2024, CRW shall submit an Alternatives Evaluation that complies with the requirements of the CSO Control Policy Section II.C.4, and that is consistent with EPA’s “Guidance for Long-Term Control Plan,” EPA 832-B-95-002, September 1995. The



Alternatives Evaluation shall consist of: (1) the identification of feasible CSO control technologies, (2) a detailed evaluation of an appropriately wide range of specific CSO control alternatives and sizes of those alternatives, and (3) selection of an appropriate suite of proposed CSO controls to achieve compliance with the Clean Water Act. CRW shall specifically evaluate the feasibility of eliminating or relocating all CSO Outfalls that discharge to Sensitive Areas, and shall give a high priority to the control of CSO Outfalls that discharge to Priority Areas, and those that have the highest frequency or greatest volume of discharge of wastewater.

a. Identification of Feasible CSO Control Technologies. CRW shall continue to assess the technical feasibility of the use of a wide range of demonstrated CSO control technologies in the Combined Sewer System that can be applied individually or in combination in each CSO-specific tributary area. CRW shall provide descriptions of the following types of CSO Control technology – Source Controls (e.g., Green Infrastructure), Collection System Controls, Storage Technologies, RDII Reduction Technologies for tributary separate sanitary sewers, and Treatment Technologies – and an assessment of the feasibility of applying each technology type individually or in combination for long-term CSO control in the Combined Sewer System, based on existing and anticipated future conditions affecting CRW’s Conveyance and Collection Systems. This evaluation is not intended to consider cost or cost effectiveness, but rather to exclude control technologies that are not technically or physically applicable to CRW’s system. Partial and complete separation of sewers in each of CRW’s CSO Outfall tributary areas, and deep tunnel storage, shall be considered feasible technologies for this purpose and be carried forward for further evaluation.

b. Evaluation of CSO Controls. CRW shall, by the application of sound engineering practices and thorough knowledge of the Collection and Conveyance Systems,

continue to identify an appropriately broad range of feasible CSO controls for detailed evaluation, as set forth below. As appropriate based on the characteristics of the Collection and Conveyance Systems, holistic combinations of feasible CSO controls shall be developed that are CSO-specific, specific to clusters of CSOs, or specific to larger portions of the Combined Sewer System (e.g., all CSOs located along one bank of a water body), including System-wide controls. CRW may apply engineering judgment to limit its evaluation of functionally equivalent CSO controls (i.e., where two CSO controls provide identical pollution, CSO frequency, and CSO volume control benefits, CRW may evaluate the lower cost or more feasible option).

i. For each feasible CSO control technology identified pursuant to

Paragraph 19(a), CRW shall evaluate:

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

2. a “knee of the curve” cost-performance analysis for each CSO control technology that will allow for the comparison of the costs to:

(i) the reduction in volume of the CSOs;

(ii) the reduction in CSO Events; and

(iii) the reduction in pollutants of concern loading from CSOs.

3. For CSO controls applied to CSOs that discharge to Receiving Waters for which the Demonstration Approach was determined to be appropriate under Paragraph 15, CRW shall utilize its calibrated H&H Model and Water Quality Model to assess the impact of each size of those controls, pursuant to Paragraph 19(b)(i), on compliance with water quality

standards within the Typical Year. Where background sources currently prevent compliance with the water quality standards, CRW shall also assess the impact of each size of the CSO controls assuming background pollutant levels reduced such that in-stream concentrations upstream of the CSO Outfalls are seventy-five (75) percent of the applicable water quality standard.

c. Green Infrastructure. CRW shall identify Green Infrastructure (“GI”) alternatives as part of the combined sewer system control alternatives under the LTCP consistent with “Greening CSO Plans: Planning and Modeling Green Infrastructure for Combined Sewer Overflow (CSO) Control,” EPA 832-R-14-001, March 2014.

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

ii. For any GI controls to be sited on private property, or operated by an entity other than CRW, CRW shall provide a discussion of how CRW will ensure the continual operation and maintenance of such controls.

20. In analyzing the selection of CSO Controls, the LTCP shall include an analysis of the LTCP’s impact on communities with environmental justice concerns.

21. The revised and updated LTCP shall include, at a minimum, the following elements:

a. The detailed results of all characterization, monitoring, and modeling activities performed in accordance with Paragraphs 14 through 18, as the basis for selection and design of effective CSO controls; including any change in the statistical determination of a “Typical Year”;

b. A summary of the public participation process that actively involved the public in the decision-making to select long-term CSO controls;

c. Identification of how the LTCP addresses Sensitive Areas as the highest priority for controlling overflows;

d. A detailed description of the evaluation and consideration of alternatives, and presentation of the results of those evaluations;

e. The findings of the alternative development, evaluation, and selection process performed in accordance with Paragraph 19;

f. A description of the type, location, and size of CSO Control Alternatives;

g. A program for monitoring and remediation as necessary of combined sewer system defects rated “5” or “4” in accordance with National Association of Sewer Service Companies (“NASSCO”) Pipeline Assessment Certification Program and Manhole Assessment Certification Program;

h. Demonstration that the selected alternatives will result in any remaining CSOs not causing or contributing to exceedances of water quality standards, for any Receiving Water where the Demonstration approach to LTCP Alternative Evaluation was selected under Paragraph 15;

- i. Maximization of treatment at the AWTF for wet weather flows, and for any bypassing, including a No Feasible Alternative Analysis, in accordance with CSO Policy Section II.C.7;
- j. An expeditious schedule for implementation of the proposed CSO controls that is consistent with the findings of the Financial Capability Analysis required by Paragraph 17; and
- k. A post-construction compliance monitoring program adequate to ascertain the effectiveness of CSO controls, to verify compliance of CRW's CSOs with water quality-based CWA requirements, and which is consistent with the "CSO Post Construction Compliance Monitoring Guidance" (May 2012), EPA-833-K-11-001.

22. Any proposal for significant modification of the LTCP development schedule or the content of any of the major deliverables associated with development of the LTCP set forth in this Consent Decree shall follow the procedures set forth below in the Section XIX (Modification).

23. After approval of the LTCP, and associated schedules, by Plaintiffs pursuant to Section VI (Review and Approval of Deliverables), the approved LTCP shall be incorporated into and shall be an enforceable part of either a modification of this Consent Decree, or a second consent decree, which shall address implementation of the revised and updated LTCP, and any necessary related measures.

**E. SEPARATE SANITARY SEWER COMPLIANCE**

24. Elimination of Sanitary Sewer Overflows. All SSOs are prohibited.

25. CRW shall report all occurrences of SSOs to PADEP by telephone at 800-541-2050 and to the City by telephone at 717-558-6900 immediately, but no later than four (4) hours after CRW becomes aware of the SSO, and shall also report in writing to EPA and

PADEP all SSOs within five (5) Days of when CRW becomes aware of the SSO. Written reports of SSOs shall include, at a minimum: (1) the location of the SSO, (2) the date and time the SSO was discovered, (3) a description of the cause(s) of the SSO and corrective action(s) taken to resolve the SSO, (4) the date and time the SSO was resolved, and (5) the estimated volume of the SSO. Upon notification or discovery of the SSO event, CRW shall immediately take the steps necessary to prevent pollution, or a danger of pollution, from an SSO event.

26. CRW shall satisfy the compliance requirements of the following referenced Paragraphs of this Consent Decree in the operation and maintenance of its Separate Sanitary Sewer System:

a. The OMM prepared and implemented under Paragraph 10(a) shall address the operation and maintenance of the Separate Sanitary Sewer System;

b. The H&H Model refined and calibrated under Paragraph 14 shall continue to include those portions of CRW's Conveyance System receiving flow from the Separate Sanitary Sewer System, as well as any portions of the Separate Sanitary Sewer System necessary to include locations that have experienced Chronic capacity-related SSOs;

c. The H&H Model shall be calibrated and validated in accordance with the current wastewater industry standard, CIWEM Code of Practice for the Hydraulic Modeling of Urban Drainage Systems, Version 01 (2017). As described in Section 5.3.5 of the Code, the observed and predicted hydrographs should aim to meet the accuracy tolerances set forth in Table 5-1.

d. The LTCP developed under Paragraph 13 shall address the reduction of dry-weather and wet-weather SSOs from separate sanitary sewers in the CRW Collection or Conveyance Systems. The LTCP shall:

- i. Identify the separate sewer system maintenance activities required to prevent dry-weather SSOs from the Collection and Conveyance Systems to the maximum extent practicable; and, the actions CRW will undertake to implement those activities;
- ii. Identify the sewer and manhole defects rated “5” and “4” in the Collection and Conveyance Systems in accordance with the NASSCO Pipeline Assessment Certification Program and Manhole Assessment Certification Program, respectively; and, the measures that CRW will implement to monitor and remediate those defects as necessary;
- iii. Identify dry-weather and wet-weather I/I rates and volumes exiting CRW separate sewers at their connection points to CRW combined sewers or to the CRW Conveyance System, as applicable; the remedial measures that CRW will implement to reduce I/I levels to lessen SSOs and/or CSOs; and, the reduction in I/I levels estimated to accrue through implementation of those remedial measures;
- iv. Identify the wet-weather capacity remedial measures required to eliminate wet-weather SSOs from the Collection and Conveyance Systems for the 2-year, 5-year and 10-year rainfall recurrence events as defined by NOAA Atlas 14; the implementation costs associated with those measures; and, the measures that CRW will implement to eliminate wet-weather SSOs, together with environmental benefit and cost justification for the level of wet-weather SSO protection CRW will implement; and,

- v. Present the schedule for implementation of the maintenance activities and remedial measures identified under Subparagraphs 26(d)(i) through 26(d)(iv).

**F. ONGOING CONSTRUCTION / EARLY ACTION PROJECTS**

27. Asset Inspection and Re-Inspection. Any existing assets in the Harrisburg Sewer System to be remediated shall be inspected, or re-inspected as necessary, not more than three (3) years before initiation of asset remediation construction. The purpose of the inspection or re-inspection is to verify the current condition of the asset and confirm that the remediation measures required or proposed under this Consent Decree remain appropriate. CRW shall provide a summary of all inspection and re-inspection results in the Semi-Annual Report required under Section VII (Reporting Requirements) for the six-month period in which those inspections are performed. If asset inspection or re-inspection indicates that the required or proposed remediation measures must change, CRW shall notify EPA and PADEP in accordance with Section XVI (Notices and Submissions) no later than thirty (30) Days following the inspection or re-inspection. The inspection and re-inspection requirements of this Paragraph do not apply to assets that are either being remediated as of the Date of Lodging of this Consent Decree or have a scheduled remediation completion date within one year of the Date of Lodging of this Consent Decree.

28. CRW shall complete the following projects within the timeframes set forth below:

- a. Collection System Improvements. CRW has performed a comprehensive assessment of the structural integrity of the Front Street Interceptor, the Paxton Creek Interceptor, the Spring Creek Interceptor, and the Asylum Run Interceptor. Based on the findings of the assessment, CRW has identified all priority remedial work in those Interceptors



and completed priority remedial work on the Asylum Run Interceptor. The priority remedial work and schedules for the Front Street Interceptor, the Paxton Creek Interceptor, and the Spring Creek Interceptor are reflected in Appendix B to this Decree. For the purposes of this Paragraph, priority remedial work shall include, but not be limited to, all interceptor segments that, based on an engineering assessment of internal inspection data, receive a pipe segment index score of “5” or “4” using the NASSCO Pipeline Assessment Certification Program and Manhole Assessment Certification Program. Progress on all priority remedial work conducted pursuant to this Paragraph shall be reported in the Semi-Annual Reports pursuant to Section VII (Reporting Requirements).

b. CSO Outfall Repair. Within one (1) year of the Date of Lodging of this Consent Decree CRW shall investigate each CSO Outfall structure for defects, define all priority remedial work necessary for CSO Outfall repairs, and develop a schedule for completion of the priority remedial work. The investigation shall include, at a minimum, a surface evaluation of the outfall pipe from the regulator chamber to the outfall, the condition of the outfall and the condition and effectiveness of any river/creek backflow prevention devices. CRW shall perform all priority remedial work to address identified defects that would lead to river or stream intrusion into the CSS or leaks of combined sewage that may occur between the regulator chamber and designated outfall that are causing the erosion of soil into the receiving water or pose a threat to human health via increased risk of exposure.

c. CSO Control Projects: CRW shall complete all CSO Control Projects in accordance with the descriptions and timelines set forth in Appendix B of this Consent Decree. All CSO Control Projects shall adhere to the reporting requirements set forth in Section VII (Reporting Requirements). CRW shall notify EPA, PADEP, and the City in accordance with

Section XVI (Notices and Submissions) of any changes or refinements to the CSO Control Projects listed in Appendix B before proceeding with project design and construction. Any proposal for significant modification of the CSO Control Projects schedule or the content of any of the deliverables associated with the CSO Control Projects in Appendix B shall follow the procedures set forth below in Section XIX (Modification). Failure to meet the deadlines and milestones in Appendix B will subject CRW to the Stipulated Penalties set forth in Section X (Stipulated Penalties). To the extent applicable, all submissions required by Appendix B shall be in compliance with Section VI (Review and Approval of Deliverables).

**G. GENERAL COMPLIANCE**

29. Effluent Limits for AWTF.

a. CRW shall comply with all final Effluent Limits, including final nutrient Effluent Limits, set forth in the NPDES Permit.

30. Dry Weather Overflows.

a. All Dry Weather Overflows from the Combined Sewer System are prohibited.

b. CRW must report all Dry Weather Overflows to PADEP by telephone at 800-541-2050 and to the City by telephone at 717-558-6900 immediately, but no later than four (4) hours after CRW becomes aware of the Dry Weather Overflow and must provide written notification to PADEP within five (5) Days of when CRW becomes aware of the Dry Weather Overflow. All DWOs shall be reported to EPA in the monthly Discharge Monitoring Reports (“DMRs”).

c. Should CRW detect a Dry Weather Overflow, CRW shall begin corrective action upon notification or discovery of the Overflow immediately. CRW shall inspect the

outfall(s) from which the Dry Weather Overflow occurred each subsequent Day until the overflow has been eliminated.

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

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

32. CRW shall report all occurrences of Unauthorized Releases to PADEP by telephone at 800-541-2050 and to the City by telephone at 717-558-6900 immediately, but no later than four (4) hours after CRW becomes aware of the Unauthorized Release, and shall also report in writing to EPA and PADEP all Unauthorized Releases within five (5) Days of when CRW becomes aware of the Unauthorized Releases. Written reports of Unauthorized Releases shall include, at a minimum: (1) the location of the Unauthorized Release, (2) the date and time the Unauthorized Release was discovered, (3) a description of the cause(s) of the Unauthorized Release and corrective action(s) taken to resolve the Unauthorized Release, (4) the date and time the Unauthorized Release was resolved, and (5) the estimated volume of the Unauthorized Release. CRW shall immediately take the steps necessary to prevent pollution, or a danger of pollution, from an Unauthorized Release event upon notification or discovery of the Release.

33. Reporting Planned Changes and Non-Compliance.

a. CRW shall comply with the provisions of the NPDES Permit requiring the reporting of anticipated and unanticipated non-compliance with the NPDES Permit, which, as of the Effective Date, are described in Part A, § III.C. of the NPDES Permit.

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

**VI. REVIEW AND APPROVAL OF DELIVERABLES**

34. For each plan, report, schedule or other document required to be submitted for review and approval pursuant to this Consent Decree and its attachments, EPA, after consultation with PADEP, may provide a response as listed in Paragraph 34(a)(i)-(iv).

a. Plaintiffs shall respond in writing as expeditiously as practicable in one of the following ways:

- i. Approve the submission;
- ii. Approve the submission upon specified conditions;
- iii. Approve part of the submission and disapprove the remainder, or
- iv. Disapprove the submission.

b. Approved Submissions. If the submission is approved pursuant to Paragraph 34(a)(i), CRW shall take all actions required by the plan, report, schedule, or other document, in accordance with the schedules and requirements of the plan, report, schedule, or other document, as approved.

c. Conditionally or Partially Approved Submissions. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 34(a)(ii) or (iii), CRW shall, upon written direction from Plaintiffs, take all actions required by the approved plan,

report, schedule, or other item that Plaintiffs determine are severable from any disapproved portions, under Section XII of this Decree (Dispute Resolution).

d. If the submission is disapproved in whole or in part pursuant to Paragraph 34(a)(iii) or (iv), CRW shall, within forty-five (45) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, CRW shall proceed in accordance with the preceding Paragraph.

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

f. Partially or Completely Disapproved Resubmittal. If a resubmitted plan, report, schedule, or other item, or portion thereof, is disapproved in whole or in part, Plaintiffs:

i. May require CRW to correct any deficiencies, in accordance with the preceding Paragraphs, or

ii. May themselves correct any deficiencies and CRW must implement the corrected submission, subject to CRW's rights to invoke Dispute Resolution and the right of Plaintiffs to seek stipulated penalties as provided in this Consent Decree.

35. Requests for Extension of Affected Deadlines. If CRW timely submits or resubmits an item for review and approval or for comment under this Consent Decree, and EPA and/or PADEP provides formal response to the submission or resubmission more than sixty (60)

Days after the date the deliverable item was submitted or resubmitted, then CRW may request an extension of any affected deadline(s), provided that CRW demonstrates that it will be unable to meet the deadline(s) as a result of the length of EPA's and/or PADEP's review process. CRW shall provide written notice to Plaintiffs of its need for an extension of the deadline(s) and indicate in the notice the amount of time requested for the extension. The amount of time requested for the extension of any deadline(s) shall not exceed the number of Days in excess of sixty (60) that elapsed between: (i) the date that Plaintiffs received the submittal or modified submittal; and (ii) the date that EPA took action under Paragraph 34. Such extension will not be effective unless EPA grants it in writing. CRW may invoke dispute resolution under Section XII (Dispute Resolution) with respect to any disputes under this Paragraph. This Paragraph applies to all deliverables under this Consent Decree with the exception of the following: the NMC Plan, which CRW has submitted for review and approval pursuant to Paragraph 10, and the Long-Term Control Plan submitted pursuant to Paragraph 13.

36. All plans and studies submitted pursuant to this Consent Decree shall be incorporated herein as part of this Consent Decree upon approval by Plaintiffs.

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

38. For each plan, report, schedule or other document required to be submitted for review and comment pursuant to this Consent Decree and its attachments, EPA, after consultation with PADEP, may choose to provide written comments on the deliverable. If EPA, after consultation with PADEP, provides comments that identify deficiencies in such a

deliverable, and EPA requests a response from CRW, then CRW shall provide a written response to EPA within thirty (30) Days of receipt of such request.

a. Stipulated Penalties Accruing. If CRW fails to substantively address EPA comments for which EPA requests a response from CRW, such failure is subject to Stipulated Penalties as provided in Section X.

## **VII. REPORTING REQUIREMENTS**

### **A. REPORTS**

39. CRW will provide to EPA copies of all written notifications and reports that CRW is required to submit to PADEP relevant to this Consent Decree. No later than 10 Days from the Effective Date, CRW shall submit to EPA and PADEP for review a list of deadlines included in this Consent Decree. For any deliverable required by the Consent Decree, the list shall indicate whether EPA and PADEP approval is required. The list shall be in substantially the same form as Appendix C, and shall be submitted in an electronic format (e.g., unlocked spreadsheet or similar format agreed to by the Parties). Within 10 Days of modification of any deadline under this Consent Decree, CRW shall provide an updated list reflecting changes to the future schedule. In the event of conflict between the list generated pursuant to this Paragraph and the Consent Decree, the Consent Decree shall control.

40. Semi-Annual Reports. On a semi-annual basis of each calendar year and commencing on the first quarter after the Effective Date of this Consent Decree and continuing until termination of this Consent Decree pursuant to Section XX (Termination), CRW shall submit to Plaintiffs and the City written status reports on their progress in implementing the Consent Decree (“Semi-Annual Reports”). The Chapter 94 Report required pursuant to CRW’s NPDES Permit shall constitute one of the Semi-Annual Reports required pursuant to this Section, shall be postmarked no later than March 31, and shall cover compliance activities for

the six (6) month period ending on the previous December 31. The second Semi-Annual Reports shall be postmarked no later than September 30 and shall cover compliance activities for the six (6) month period ending on the previous June 30. The Semi-Annual Reports shall be addressed and submitted to the following:

Program Manager, Clean Water Program  
Department of Environmental Protection  
South Central Regional Office  
909 Elmerton Avenue  
Harrisburg, PA 17110-8200

and

NPDES Enforcement Branch, 3WP42  
U.S. Environmental Protection Agency, Region 3  
[Maslowski.Steven@epa.gov](mailto:Maslowski.Steven@epa.gov)

and

Mayor, City of Harrisburg  
Mayor's Office, Suite 202  
Reverend Dr. Martin Luther King City Government Center  
10 North Second Street  
Harrisburg, PA 17101

Neil Grover  
City Solicitor, City of Harrisburg  
Reverend Dr. Martin Luther King City Government Center  
10 North Second Street  
Harrisburg, PA 17101

The submission to EPA shall be sent by email, but EPA may also request a hard copy. A sample format for the Semi-Annual Report is attached as Appendix A. The Semi-Annual Report shall include at a minimum:

a. A statement setting forth the deadlines and other terms that CRW was required by this Consent Decree to meet since the date of the last Semi-Annual Report, whether and to what extent CRW met these requirements, and the reasons for any noncompliance;



b. A description of the projects, work, and activities completed during the prior six-month period, and a projection of the projects, work, and activities to be performed pursuant to this Consent Decree during the next or succeeding six-month period;

c. A summary of all the problems or potential problems encountered during the prior six-month period, and the actions taken to rectify the problems;

d. A summary of all contacts with Plaintiffs during the reporting period relating to CSOs, SSOs, or implementation of AWTF upgrades;

e. A record of all CSO discharges that took place during the reporting period, including:

i. The date and approximate time and duration of each CSO discharge;

ii. The volume and nature of each CSO discharge;

iii. The influent and effluent flow rates at the AWTF at the time of the CSO discharge;

iv. Precipitation events that occurred before and during the CSO discharge, including the date and time that the precipitation began and ended;

f. Information regarding each instance of Secondary Bypass at the AWTF, including:

i. The date of each bypass;

ii. The amount of rainfall, and if not weather-related, the cause of the bypass;

iii. Estimated duration and total volume of bypass;

iv. Minimum, maximum, and average flow through complete treatment during bypass;

v. Date and estimated time the bypass started and ended.

- g. A statement of any exceedances of NPDES permit limitations;
- h. Disclosure of any non-compliance with the requirements of this Consent

Decree, including:

- i. An explanation of the likely cause of the non-compliance, or, if the likely cause of the non-compliance cannot be determined at the time the Semi-Annual Report is due, an explanation as to why the likely cause cannot be determined at that time;

- ii. A description of the remedial steps taken, or to be taken, to prevent or minimize such non-compliance in the future, and;

- iii. A projection of work to be performed pursuant to this Consent Decree during the next or succeeding six-month period. Notification to Plaintiffs of any anticipated delay shall not, by itself, excuse the delay.

- i. Semi-Annual Meetings. As necessary, the Parties shall meet at least semi-annually, approximately one (1) month following CRW's submission of its Semi-Annual Report and Chapter 94 Report, to review and discuss the reports, progress made during the previous six (6) month period, the results of any ongoing work and analyses, and compliance with the requirements of the Consent Decree. Any Party may request that additional meetings be held.

41. Reports of an Immediate Threat. Whenever any event occurs which may pose an imminent threat to the public health or welfare or the environment, CRW shall notify Plaintiffs and the City orally and by electronic or facsimile transmission immediately, but no later than four (4) hours after CRW first became aware of the event, at: 800-541-2050 and 717-558-6900. This reporting requirement is in addition to the requirements set forth in the preceding Paragraph.

**B. CERTIFICATION AND ADMISSIBILITY**

42. Any report or plan, or any representation made by CRW as to compliance with this Consent Decree that CRW is required by this Consent Decree to submit shall be signed by an official or authorized agent of CRW and shall 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 gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

43. The reporting requirements of this Consent Decree do not relieve CRW of any reporting obligations required by the CWA or implementing regulations, or by any other Federal, Commonwealth, or local law, regulation, permit, or other requirement.

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

45. CRW shall not object to the authenticity of any report, plan, or other submission prepared in accordance with Section V (Compliance Measures), or the information contained in said report, plan or submission in any proceeding to enforce this Consent Decree.

46. Nothing in this Section relieves CRW of the obligation to provide the notice required by Section XI of this Consent Decree (Force Majeure).

## VIII. FUNDING

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

## IX. CIVIL PENALTIES

48. Civil Penalty Payable by CRW. The United States and PADEP shall defer assessment of all civil penalties for CRW's violations of the Clean Water Act and the Clean Streams Law, as alleged in the Complaint, until such time as Plaintiffs have approved CRW's updated LTCP and this Consent Decree is submitted for modification, or a second decree negotiated, to address implementation of the updated LTCP and any necessary related measures, pursuant to Paragraph 23 of this Consent Decree.

## X. STIPULATED PENALTIES

49. Liability for Stipulated Penalties. CRW shall be liable to the United States and PADEP 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 Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

50. Reporting Requirements. For each failure to submit a timely and adequate plan, report, schedule, written notice, or other deliverable required by this Decree, CRW shall pay the following stipulated penalties to Plaintiffs per violation per Day, for each Day it fails to submit the required deliverable, or to make any required material changes to such deliverable(s) within the required timeframe:

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

51. Compliance Milestones.

a. For each failure to comply with a requirement of, or meet a deadline in, the NMC Plan pursuant to Paragraph 10 [Nine Minimum Controls], Paragraph 12 [Minimum Control Measures], Paragraphs 13-23 [Long-Term Control Plan], CRW shall pay the following stipulated penalties to Plaintiffs per violation per Day:

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

b. For each failure to comply with a requirement of, or meet a deadline in, Paragraph 27 [Asset Inspection and Re-Inspection] or Paragraph 28 [Ongoing Construction / Early Action Projects], CRW shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$750
Days 31-60	\$1,000
Days 61-90	\$1,500
Days 91 and over	\$3,000

52. General Compliance.

a. For each discharge in violation of Paragraph 30(a) [Dry Weather Overflows], or for each discharge in violation of Paragraph 24 [Sanitary Sewer Overflows], or for each discharge in violation of Paragraph 31 [Unauthorized Releases], CRW shall pay to Plaintiffs the following stipulated penalties:

DWO or SSO or Unauthorized Release  
volume:

The penalty shall be:

Less than or equal to 10,000 gallons: \$1,000

Greater than or equal to 10,000 gallons, but  
less than or equal to 250,000 gallons:

(1) Within 2 years of Effective Date \$1,000

(2) Between 2 years and 5 years from  
Effective Date \$2,000

(3) More than 5 years from Effective  
Date \$3,000

Greater than 250,000 gallons, but less than  
or equal to 1,000,000 gallons:

(1) Within 2 years of Effective Date \$2,000

(2) Between 2 years and 5 years from  
Effective Date \$4,000

(3) More than 5 years from Effective  
Date \$8,000

Greater than 1,000,000 gallons:

(1) Within 2 years of Effective Date \$3,000

(2) Between 2 years and 5 years from  
Effective Date \$7,500

(3) More than 5 years from Effective  
Date \$15,000

b. For each failure to comply with Paragraph 29(a) [Effluent Limits] CRW

shall pay the following stipulated penalties to Plaintiffs per violation of permit conditions:

Type of Permit Limit:  
Daily or Instantaneous  
Weekly  
Monthly

Penalty per violation:  
\$500  
\$1,500  
\$3,000

53. Noncompliance with all other Provisions of the Consent Decree. Stipulated penalties shall accrue for each Day of noncompliance with any requirement not otherwise provided for by the Stipulated Penalty Provisions in Paragraph 49 through Paragraph 52 as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$200
Days 31-60	\$300
Days 61-90	\$500
Days 91 and over	\$700

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

55. Subject to CRW's right to invoke dispute resolution pursuant to Section XII (Dispute Resolution), CRW shall pay stipulated penalties to the United States and PADEP within thirty (30) Days of a written demand by either Plaintiff as follows:

a. CRW shall pay to the United States fifty percent (50%) of the total stipulated penalty amount due by FedWire Electronic Funds Transfer ("EFT") to the DOJ account, in accordance with instructions provided to CRW by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Middle District of Pennsylvania. The payment instructions provided by the FLU will include a Consolidated Debt Collect System ("CDCS") number, which CRW shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Charlotte Katzenmoyer  
Chief Executive Officer  
Capital Region Water  
3003 North Front Street  
Harrisburg, PA 17110  
[Charlotte.Katzenmoyer@capitalregionwater.com](mailto:Charlotte.Katzenmoyer@capitalregionwater.com)

on behalf of CRW. CRW may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section XVI (Notices and Submissions). At the time of payment to the United States, CRW shall send notice that payment has been made: (i) to EPA via email at [CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the EPA Regional Hearing Clerk via email at [R3\\_Hearing\\_Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov); (iii) to DOJ via email or regular mail in accordance with Section XVI (Notices and Submissions); and (iv) to EPA Region III in accordance with Section XVI (Notices and Submissions). Such notice shall state that the payment is for stipulated penalties owed pursuant to the Consent Decree in *United States et al. v. Capital Region Water et al.* (M.D. Pa.) and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-1-1-10157. The notice shall further identify the specific stipulated penalty provision involved, and include a description of the violation(s) of this Consent Decree for which the stipulated penalties are being tendered.

b. CRW shall pay to PADEP fifty percent (50%) of the stipulated penalty amount due by submitting a corporate check or the like made payable to “Commonwealth of Pennsylvania, Clean Water Fund” to the Program Manager, Clean Water Program, Department of Environmental Protection, South Central Regional Office, 909 Elmerton Ave., Harrisburg, Pennsylvania 17110. A transmittal letter shall accompany the check, and the letter shall state that the payment is for stipulated penalties owed pursuant to the Consent Decree in *United States*



*and Commonwealth of Pennsylvania Department of Environmental Protection v. The City of Harrisburg and Capital Region Water* and shall reference the civil action number. The transmittal letter shall also specify the violation(s) for which the penalties are being paid.

c. Interest. If CRW fails to tender all or any portion of the stipulated penalty amount due as required by this Paragraph, interest on the unpaid amount shall accrue in accordance with the provisions of 28 U.S.C. § 1961 and CRW shall pay such interest from the date that a payment is due until the full amount owed is paid.

56. Discretion to Reduce or Waive Stipulated Penalties. Either EPA or PADEP may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree. If one Plaintiff reduces or waives stipulated penalties, the Plaintiff not offering a waiver or reduction retains its authority to require payment of stipulated penalties.

57. Penalty Accrual During Dispute Resolution. Stipulated penalties shall continue to accrue as provided in this Section during any dispute resolution, with interest calculated as provided in Paragraph 55(c) [Interest], but need not be paid until the following:

a. If the dispute is resolved by agreement of the Plaintiffs and CRW; or

b. If the dispute is resolved by a decision by EPA and/or PADEP that is not appealed to the United States District Court for the Middle District of Pennsylvania, CRW shall pay accrued penalties, together with interest, to Plaintiffs within thirty (30) Days of the effective date of the agreement or within thirty (30) Days of CRW's receipt of the decision or order.

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

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

58. If CRW fails to pay stipulated penalties according to the terms of this Consent Decree, CRW shall be liable for interest on such penalties, as provided for in Paragraph 55(c) [Interest], accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or PADEP from seeking any remedy otherwise provided by law for CRW's failure to pay any stipulated penalties.

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

## **XI. FORCE MAJEURE**

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

obligation under this Consent Decree. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and/or changed financial circumstances shall not, in any event, be considered Force Majeure events. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or delays caused by inadequate facility planning or plans on the part of CRW does not constitute Force Majeure events.

61. Where any compliance obligation in Section V (Compliance Measures) requires CRW to obtain a federal, state, or local permit or approval, CRW shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. CRW may seek relief under this Section 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 CRW has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

62. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, CRW shall provide notice to Plaintiffs orally or by electronic or facsimile transmission within 72 hours of when CRW first knew that the event might cause a delay. Within seven (7) Days thereafter CRW shall provide in writing to Plaintiffs 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; CRW's rationale for attributing such delay to a Force Majeure event if assertion of such a claim is intended; and a statement as to whether, in the opinion of CRW, such event may cause or contribute to an endangerment to public health, welfare or the environment. CRW 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 requirement shall preclude CRW from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure.

63. CRW shall be deemed to know of any circumstance of which CRW, or any entity controlled by CRW, including CRW's consultants and contractors, knew or should have known.

64. If Plaintiffs agree that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by Plaintiffs, 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. Plaintiffs will notify CRW in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

65. If Plaintiffs do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, Plaintiffs will notify CRW in writing of their decision.

66. If CRW elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), they shall do so no later than fifteen (15) Days after receipt of Plaintiffs' notice. In any such proceeding, CRW 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 CRW complied with the requirements of Paragraphs 62 and 63.

67. Nothing in this Section relieves CRW of its duty to use due diligence to timely complete the requirements of this Consent Decree or of CRW's obligation to meet all discharge limitations and other obligations contained in its NPDES permit.

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

## **XII. DISPUTE RESOLUTION**

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

70. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when CRW sends the United States and PADEP a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement. If Plaintiffs and CRW cannot resolve a dispute by informal negotiations, then the position advanced by the United States, in consultation with PADEP, shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, CRW invokes formal dispute resolution procedures as set forth below.

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

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

73. CRW may seek judicial review of the dispute by filing with the Court and serving on the United States and PADEP, in accordance with Section XVI of this Consent Decree (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of CRW's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

75. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 71 [Formal Dispute Resolution] pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, CRW shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 71 [Formal Dispute Resolution], CRW shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of this Consent Decree, and that CRW is entitled to relief under applicable law.

76. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of CRW under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 57 [Penalty Accrual During Dispute Resolution]. If CRW does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

### **XIII. EFFECT OF SETTLEMENT**

77. Resolution of Claims. This Consent Decree resolves the civil claims of the United States and PADEP for the violations alleged against CRW in Plaintiffs' Complaint

through the Date of Lodging of this Consent Decree, except that the Parties specifically acknowledge and agree that this Consent Decree does not resolve any claims for injunctive relief relating to CRW's alleged failure to implement an LTCP that complies with the requirements of the CSO Policy and the CWA, and does not resolve any claims for civil penalties relating to CRW's alleged violations of the Clean Water Act or Clean Streams Law. This Consent Decree resolves the civil claims of the United States and PADEP against the City for the violations alleged in Plaintiffs' Complaint through the Date of Lodging of this Consent Decree.

78. The United States and PADEP reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 77 [Resolution of Claims]. This Consent Decree shall not be construed to limit the rights of the United States or PADEP to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 77 [Resolution of Claims]. The United States and PADEP further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Harrisburg Sewer System, whether related to the violations addressed in this Consent Decree or otherwise.

79. In any subsequent administrative or judicial proceeding initiated by the United States or PADEP for injunctive relief, civil penalties, or other appropriate relief relating to the Harrisburg Sewer System, Defendants shall not assert, and may not maintain, any defense or claim against Plaintiffs based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or PADEP in the subsequent proceeding were or



should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 77 of this Section [Resolution of Claims].

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

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

#### **XIV. NOT A PERMIT**

82. This Consent Decree is not a permit and shall not be construed as a permit issued under any federal, state, or local laws or regulations, nor as a modification of any existing permit so issued. This Consent Decree shall not in any way relieve CRW of its obligations to obtain a permit for the AWTF, the Combined Sewer System, or any other part of the wastewater treatment and Sewer System or facilities or MS4, and to comply with the requirements of any NPDES permit, or Defendants of their obligations to comply with any other applicable federal or state law or regulation. CRW shall comply with any new permit, or modification of existing permits in accordance with applicable federal, state, or local laws or regulations.

83. The United States and PADEP do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that CRW's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, 33 U.S.C. §§ 1251-1387, or with any other provisions of federal, state, or local laws, regulations, or permits. Nothing herein shall be construed as relieving Defendants of the duty to comply with the CWA, the regulations promulgated under the CWA, and all applicable permits issued under the CWA and its regulations.

## **XV. INFORMATION COLLECTION AND RETENTION**

84. The United States and PADEP, and their representatives, contractors, consultants, and attorneys shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of proper credentials, for the purposes of:

- a. Monitoring the progress of activities required under this Consent Decree;
- b. Verifying any data or information submitted to the United States or PADEP in accordance the terms of to this Consent Decree;
- c. Obtaining samples and, upon request, splits of any samples taken by CRW or its representatives, contractors or consultants;
- d. Obtaining documentary evidence, including photographs and similar data;
- e. Inspecting and evaluating any portion or portions of the Harrisburg Sewer System;
- f. Inspecting and reviewing any records required to be kept under the terms and conditions of the Consent Decree, CRW's NPDES Permit, CRW's MS4 Individual Permit, any future modifications or renewals of the NPDES or MS4 Individual Permits, and the CWA; and
- g. Assessing compliance with this Consent Decree.

85. Upon request, CRW shall provide Plaintiffs or their authorized representatives, splits of any samples taken by CRW. Upon request, Plaintiffs shall provide CRW splits of any sample taken by EPA or PADEP.

86. Until five (5) years after the termination of this Consent Decree, CRW shall retain, and shall instruct its contractors and agents to preserve, the following documents and electronically stored data:

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

87. CRW shall retain the following documents and electronically stored data until at least five (5) years after termination of this Consent Decree:

- a. All reports, plans, permits, and documents submitted to EPA or PADEP pursuant to this Consent Decree, including all underlying research and data; and
- b. All reports and data regarding water quality.

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

89. At the conclusion of the information-retention period provided in Paragraphs 86 and 87, CRW shall notify the United States and PADEP at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the Paragraphs 86 and 87 and, upon request by the United States or PADEP, CRW shall deliver any such documents, records, or other information to the EPA or PADEP. CRW may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If CRW asserts such a privilege, they shall provide the following:

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

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

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

## **XVI. NOTICES AND SUBMISSIONS**

91. CRW shall post on its website each plan, report, schedule or other document required to be submitted to EPA or PADEP pursuant to this Consent Decree, along with any

attachments, within seven (7) Days of its submission. In addition, for any plan, report, schedule, or other document submitted for review and approval, CRW shall place a copy of the final document on its website within seven (7) Days of approval, approval contingent on conditions, or partial approval. CRW shall also post all written comments received from EPA and PADEP for any submission subject to review and approval. CRW shall maintain these materials on its website until termination of this Consent Decree.

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

As to the United States by email:

[eescdcopy.enrd@usdoj.gov](mailto:eescdcopy.enrd@usdoj.gov)

Re: DJ# 90-5-1-1-10157

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, Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-10157

As to US EPA by email:

Chief  
NPDES Section (3ED32)  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 3  
[Maslowski.Steven@epa.gov](mailto:Maslowski.Steven@epa.gov)

Pamela J. Lazos  
Senior Assistant Regional Counsel  
Office of Regional Counsel (3RC40)  
U.S. Environmental Protection Agency, Region 3  
[R3\\_ORC\\_mailbox@epa.gov](mailto:R3_ORC_mailbox@epa.gov)

As to PADEP:

Regional Counsel  
Department of Environmental Protection  
South Central Regional Office  
909 Elmerton Avenue  
Harrisburg, PA 17110-8200

Environmental Program Manager  
Clean Water Program  
Department of Environmental Protection  
South Central Regional Office  
909 Elmerton Avenue  
Harrisburg, PA 17110-8200

As to CRW:

Charlotte Katzenmoyer  
Chief Executive Officer  
Capital Region Water  
3003 North Front Street  
Harrisburg, PA 17110  
[Charlotte.Katzenmoyer@capitalregionwater.com](mailto:Charlotte.Katzenmoyer@capitalregionwater.com)

Frederic P. Andes, Esq.  
Barnes & Thornburg LLP  
Suite 4400  
One N. Wacker Drive  
Chicago, IL 60606-2833  
[Frederic.Andes@btlaw.com](mailto:Frederic.Andes@btlaw.com)

As to the City:

Mayor, City of Harrisburg  
Mayor's Office, Suite 202  
Reverend Dr. Martin Luther King City Government Center  
10 North Second Street  
Harrisburg, PA 17101

Neil Grover  
City Solicitor, City of Harrisburg  
Reverend Dr. Martin Luther King City Government Center  
10 North Second Street  
Harrisburg, PA 17101

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

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

**XVII. EFFECTIVE DATE**

95. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court after satisfaction of the public notice and comment procedures of 28 C.F.R. § 50.7, or a Motion to Enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

**XVIII. RETENTION OF JURISDICTION**

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

## **XIX. MODIFICATION**

97. Except as otherwise expressly set forth in this Consent Decree, the terms of this Consent Decree, including the attached appendices, may be modified only by a subsequent written agreement signed by all Parties, excluding any Party for which, at the time of the modification, the Consent Decree has already been terminated pursuant to Section XX (Termination). Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

98. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 75 [Standard of Review], 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**

99. After CRW has: (i) submitted the revised and updated LTCP to Plaintiffs for review and approval pursuant to Paragraph 13, and the LTCP has been approved by Plaintiffs; (ii) achieved compliance with all provisions contained in this Consent Decree and subsequently have maintained compliance with each and every provision of this Consent Decree for twelve (12) consecutive months; (iii) satisfactorily complied, as determined by Plaintiffs, with the NPDES and MS4 Individual Permits for a period of twelve (12) consecutive months; (iv) paid any accrued stipulated penalties as required by this Consent Decree, CRW may serve upon the United States and PADEP a Request for Termination, stating that CRW has satisfied those requirements, together with all necessary supporting documentation.

100. After the City has: (i) paid any accrued stipulated penalties as required by this Consent Decree; and (ii) satisfactorily complied, as determined by Plaintiffs, with all other



applicable requirements of this Consent Decree, the City may serve upon the United States and PADEP a Request for Termination, stating that the City has satisfied those requirements, together with all necessary supporting documentation.

101. Following receipt by Plaintiffs of a Request for Termination, Plaintiffs and the Defendant requesting termination shall confer informally concerning the Request and any disagreement they may have as to whether the requesting Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with PADEP, agrees that the Consent Decree may be terminated as to the requesting Defendant, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree as to the requesting Defendant. Termination of the Consent Decree as to the requesting Defendant shall not relieve the non-requesting Defendant of any obligations under this Consent Decree.

102. If the United States, after consultation with PADEP, does not agree that the Consent Decree may be terminated as to the requesting Defendant, the Defendant requesting termination may invoke Dispute Resolution under Section XII (Dispute Resolution). However, the Defendant requesting termination shall not seek Dispute Resolution under Paragraph 71 [Formal Dispute Resolution] of any dispute regarding termination until at least ninety (90) Days after service of its Request for Termination.

## **XXI. PUBLIC PARTICIPATION**

103. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold consent if the public comments regarding this Consent Decree disclose facts or considerations indicating that this Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree

without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree.

## **XXII. SIGNATORIES/SERVICE**

104. Each undersigned representative of Defendants, PADEP, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

105. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants hereby agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

## **XXIII. COSTS OF SUIT**

106. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and PADEP shall be entitled to collect from CRW the costs (including attorneys' fees) incurred in any action necessary to collect any stipulated penalties due but not paid by CRW.

## **XXIV. INTEGRATION/APPENDICES**

107. This Consent Decree and its appendices 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, concerning the settlement embodied herein. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the reporting form for the Semi-Annual Reports.

“Appendix B” is the list of CSO Control Projects.

“Appendix C” is the Table of Deliverables.

Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

#### **XXV. FINAL JUDGMENT**

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

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023

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UNITED STATES DISTRICT JUDGE  
Middle District of Pennsylvania

The Undersigned Parties enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. City of Harrisburg; Capital Region Water* (M.D. Pa.) relating to alleged violations of the Clean Water Act.

FOR UNITED STATES OF AMERICA:

TODD KIM  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

2/16/23  
Date

  
DEVON A. AHEARN  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611  
Phone: (202) 514-2717  
[Devon.Ahearn@usdoj.gov](mailto:Devon.Ahearn@usdoj.gov)

Of Counsel:

GERARD M. KARAM  
U.S. Attorney  
Middle District of Pennsylvania

D. BRIAN SIMPSON  
Assistant United States Attorney  
Middle District of Pennsylvania  
OH Bar # 71431  
228 Walnut Street, Suite 220  
Harrisburg, PA 17108-1754  
Phone: (717) 221-4482  
Fax: (717) 221-2246  
[D.Brian.Simpson@usdoj.gov](mailto:D.Brian.Simpson@usdoj.gov)

The Undersigned Parties enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. City of Harrisburg; Capital Region Water* (M.D. Pa.) relating to alleged violations of the Clean Water Act.

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

12/19/2022

Date

DIANA  
SAENZ

Digitally signed by  
DIANA SAENZ  
Date: 2022.12.19  
14:25:13 -05'00'

DIANA SAENZ  
Acting Director  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

12/19/2022

Date

CHRISNA  
BAPTISTA

Digitally signed by  
CHRISNA BAPTISTA  
Date: 2022.12.19  
10:42:08 -05'00'

CHRISNA BAPTISTA  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
Phone: (202) 564-4272  
[baptista.chrisna@epa.gov](mailto:baptista.chrisna@epa.gov)

The Undersigned Parties enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. City of Harrisburg; Capital Region Water* (M.D. Pa.) relating to alleged violations of the Clean Water Act.

FOR THE ENVIRONMENTAL PROTECTION AGENCY, REGION 3:

\_\_\_\_\_  
Date

**ADAM ORTIZ** Digitally signed by ADAM ORTIZ  
Date: 2023.01.25 14:10:17  
-05'00'

\_\_\_\_\_  
ADAM ORTIZ  
Regional Administrator  
U.S. EPA Region 3

\_\_\_\_\_  
Date

**CECIL RODRIGUES** Digitally signed by CECIL  
RODRIGUES  
Date: 2023.01.18 11:46:03 -05'00'

\_\_\_\_\_  
CECIL RODRIGUES  
Regional Counsel  
U.S. EPA Region 3

\_\_\_\_\_  
Date


**PAMELA LAZOS** Digitally signed by PAMELA  
LAZOS  
Date: 2023.01.18 11:25:56 -05'00'

\_\_\_\_\_  
PAMELA J. LAZOS  
Senior Assistant Regional Counsel  
U.S. EPA Region 3  
1650 Arch Street  
Philadelphia, PA 19103  
(215) 814-2658  
lazos.pamela@epa.gov


The Undersigned Parties enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. City of Harrisburg; Capital Region Water* (M.D. Pa.) relating to alleged violations of the Clean Water Act.

FOR THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

11/21/22  
Date

  
DAWN M. HERB  
Regional Counsel  
Office of Chief Counsel  
South Central Regional Office  
Department of Environmental Protection  
909 Elmerton Avenue  
Harrisburg, PA 17110-8200  
Phone: (717) 705-4817  
Fax: (717) 772-2400


11/21/22  
Date

  
MARIA D. BEBENEK, P.E.  
Program Manager  
Department of Environmental Protection  
Clean Water Program  
South Central Regional Office  
909 Elmerton Avenue  
Harrisburg, PA 17110  
Phone: (717) 705-4795  
Fax: (717).705-4760

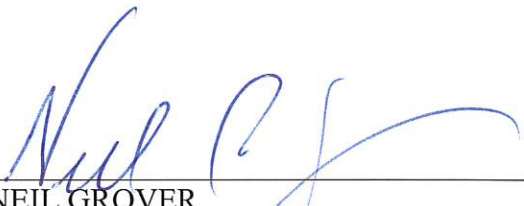
The Undersigned Parties enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. City of Harrisburg; Capital Region Water* (M.D. Pa.) relating to alleged violations of the Clean Water Act.

FOR THE CITY OF HARRISBURG:


10-26-2022  
Date

  
WANDA R.D. WILLIAMS  
Mayor, City of Harrisburg  
Mayor's Office, Suite 202  
Reverend Dr. Martin Luther King City Government  
Center  
10 North Second Street  
Harrisburg, PA 17101

10-26-2022  
Date

  
NEIL GROVER  
City Solicitor, City of Harrisburg  
Reverend Dr. Martin Luther King City Government  
Center  
10 North Second Street  
Harrisburg, PA 17101

10/26/22  
Date

  
CHARLIE DEBRUNNER  
City Controller, City of Harrisburg  
Reverend Dr. Martin Luther King City Government  
Center  
10 North Second Street  
Harrisburg, PA 17101



The Undersigned Parties enter into this Consent Decree in the matter of *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. City of Harrisburg; Capital Region Water* (M.D. Pa.) relating to alleged violations of the Clean Water Act.

FOR CAPITAL REGION WATER:

9/20/22  
Date

  
\_\_\_\_\_  
MARC KUROWSKI  
Chairperson, Board of Directors

9-28/22  
Date

  
\_\_\_\_\_  
CHARLOTTE KATZENMOYER  
Chief Executive Officer

## APPENDIX A

### *United States of America and Commonwealth of Pennsylvania Department of Environmental Protection v. Capital Region Water and the City of Harrisburg, PA*

On a semi-annual basis on March 31 and September 30, for each Six-month Period commencing with the first full Six-month Period after entry of this Consent Decree and continuing until termination, CRW shall submit to EPA and PADEP a progress report (“Semi-Annual Report”) regarding the implementation of the requirements of this Decree in the previous Six-month Period. The Semi-Annual Report shall include at a minimum:

- a. A statement setting forth the deadlines and other terms that CRW is required by this Consent Decree to meet since the date of the last Semi-Annual Report, whether and to what extent CRW has met these requirements, the reasons for any noncompliance, and steps that are being taken to get back on schedule;
- b. A general description of the work completed within the Six-month Period, and a projection of work to be performed pursuant to this Consent Decree during the next or succeeding Six-month Period. This description of work completed should include Nine Minimum Controls and Minimum Control Measures activity during the past Six-month Period. Notification to U.S. EPA and PADEP of any anticipated delay shall not, by itself, excuse the delay;
- c. A statement of any exceedances of NPDES Permit;
- d. A summary of all Sanitary Sewer Overflows (SSOs) and other unpermitted discharges occurring within the Six-month Period including the actual or estimated frequency, duration, and volume of each SSO; and
- e. A summary of all Combined Sewer Overflows (CSOs) within the Six-month Period including the following information:
  1. Type of overflow (wet or dry);
  2. Outfall number;
  3. Date of overflow;
  4. Detailed description of cause of overflow;
  5. Estimated amount and duration of rainfall, if applicable;
  6. Estimated duration of overflow;
  7. Total volume (gallons) of overflow;
  8. Date and estimated time the discharge started;
  9. Date and estimated time the discharge ended;
  10. Any corrective action taken; and
  11. Initial of the inspector.

- f. Information regarding each instance of Secondary Bypass at the Advanced Wastewater Treatment Facility (“AWTF”), including:
  - 1. Date of each bypass;
  - 2. Amount of rainfall;
  - 3. If not wet weather related, cause of bypass;
  - 4. Estimated duration of bypass;
  - 5. Total volume (gallons) of bypass;
  - 6. Minimum, maximum and average flow through complete treatment during bypass;
  - 7. Date and estimated time the bypass started;
  - 8. Date and estimated time the bypass ended.
  
- g. Any updated Gantt charts or equivalent long-term planning documents.

**APPENDIX B**

<b>CSO Control Project Description</b>		<b>Start Construction</b>	<b>Complete Construction</b>
1	<b>Storm Sewer Diversion in CSO-048 (Coordinated with the I-83 Expansion Project)</b>		
1a	Phase 1: Partial construction of 48” pipe storm sewer diversion of SS-011, 012, and 013 to be installed during PennDOT’s construction of the stormwater piping systems for the I-83 expansion project; the 48” pipe will stay dry and capped until the completion of Phase 2	Fall 2023 <sup>1</sup>	Summer 2025 <sup>1</sup>
1b	Phase 2: Completion of 48” pipe storm sewer diversion (Outfall to Paxton Creek and 16th Street Connection to Railroad); 18th Street 36th storm sewer diversion pipe of SS-011 and 012; completion of additional surface detention and WQ Management	6/30/2031	12/31/2032

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<sup>1</sup> Schedule for Phase 1 and storm sewer diversion in CSO-048 area will be coordinated with PennDOT expansion of I-83, currently scheduled for 2023-2026 (PennDOT Phase 1). Tentative dates provided by PennDOT are: Let Date August 10, 2023; Start Construction Fall 2023; Approximate Completion of 48” Storm Construction Summer 2025; Approximate Completion of Contract 079 Fall 2026. CRW will notify the Plaintiffs upon receipt of information that PennDOT's tentative dates have changed. In the event of substantial delay or other changes to the PennDOT schedule or projects, CRW will consider alternatives and address any changes in its LTCP submission scheduled for December 31, 2024.

<b>CSO Control Project Description</b>				<b>Start Construction</b>	<b>Complete Construction</b>	
2	<b>Collection System Projects</b>					
2a	Small sewer separation of catchments			3/31/2023	12/31/2025	
	<i>Sewer</i>	<i>Impervious Area</i>	<i>Overflow Volume</i>			<i>Overflow Frequency</i>
	S-027	2.5 acres	1.6 MG /typical year			41 per typical year
	S-032	7.6 acres	7.0 MG /typical year			76 per typical year
	S-041	1.8 acres	2.6 MG /typical year			65 per typical year
	S-060	5.0 acres	1.5 MG /typical year	36 per typical year		
2b	Modification to selected CSO regulators identified after finishing Front Street Pump Station			12/31/2021	6/30/2022	
3	<b>Front Street Interceptor</b> <ul style="list-style-type: none"> <li>• CIPP lining or segmented slip-lining</li> <li>• Restore structural integrity and hydraulic capacity</li> </ul>			7/31/2022	7/31/2023	
4	<b>AWTF Primary Clarifier Improvements</b> <ul style="list-style-type: none"> <li>• Equipment replacement (drives, chains, flights, pumps)</li> <li>• Structural rehabilitation and enhanced baffling</li> </ul>			3/31/2023	12/31/2024	

<b>CSO Control Project Description</b>				<b>Start Construction</b>	<b>Complete Construction</b>
5	<b>Continued Enhancements to AWTF</b>				
5a	Anaerobic digester roof repair and primary digester facilities			n/a	12/31/2022
5b	Cogeneration (CHP) to RNG/WAS thickening/HSW receiving			8/31/2022	3/31/2024
5c	Gravity thickeners			3/31/2024	3/31/2025
5d	Secondary digester conversion			9/30/2025	12/31/2027
5e	Dewatering improvements			3/31/2026	12/31/2027
5f	<b>General AWTF equipment renewal and replacement</b>				
	Phase 1			n/a	12/31/2025
	Phase 2			n/a	12/31/2030
	Phase 3			n/a	12/31/2032
6	<b>Decentralized Green/Grey Controls</b>				
	<i>Phase</i>	<i>Location</i>	<i>Approximate Acreage</i>		
6a	Phase 3	Camp Curtin YMCA GSI and Bellevue Park SW Ponds	21 managed acres	12/31/2021	12/31/2022
6b	Phase 4	Lower Paxton Creek, Uptown, and Lower Front planning areas GSI	21 managed acres	9/30/2022	6/30/2024
6c	Phase 5	Lower Paxton Creek, Uptown, and Lower Front planning areas GSI	9 managed acres	9/30/2023	6/30/2025
6d	Phase 6	System-wide GSI	50 managed acres total	n/a	12/31/2030

CSO Control Project Description			Start Construction	Complete Construction
6e	Phase 7	System-wide GSI	n/a	12/31/2032
7	<b>Collection System Renewal (Asset Management Program)</b> Selected projects to correct defects identified during CCTV inspections			<i>Asset Management Plan to be completed by 12/31/2023</i>
7a	Phase 1		n/a	12/31/2025
7b	Phase 2		n/a	12/31/2030
7c	Phase 3		n/a	12/31/2032
8	<b>Paxton Creek Interceptor</b> <ul style="list-style-type: none"> <li>• Segmented slip lining or replacement</li> <li>• Restore structural integrity</li> </ul>		6/30/2027 <sup>2</sup>	6/30/2030 <sup>2</sup>
9	<b>Rehabilitation and Enhancement of CSO Regulator Structures</b>			
9a	Front Street Interceptor outfall pipes, flap gates, control orifices, dam heights		3/31/2023	6/30/2023
9b	Paxton Creek Interceptor outfall pipes, flap gates, control orifices, dam heights		3/31/2030	9/30/2030
10	<b>Spring Creek Pump Station and Interceptor</b> <ul style="list-style-type: none"> <li>• Rehabilitation or replacement of pump station to increase capacity to 20 mgd</li> <li>• Enhanced SCADA controls, maximize flow to AWTF</li> </ul>			

<sup>2</sup> Schedule for the Paxton Creek Interceptor tasks will be coordinated with other parties. Tentative dates are 6/30/27 for commencement of construction, and 6/30/30 for completion of construction. CRW will notify the Plaintiffs if the tentative dates change.

<b>CSO Control Project Description</b>		<b>Start Construction</b>	<b>Complete Construction</b>
10a	Phase 1: Study/Design	n/a	3/31/2025 <sup>3</sup>
10b	Phase 2: Construction	3/31/2026	12/31/2028
11	<b>NMC 6 Control of Solids and Floatable Materials</b> Storm inlet/catch basin rehabilitation and modification (including installation of sewer traps/hoods/baffles, Type C inlet tops, and/or sumps at each inlet/catch basin)		
11a	Phase 1: Inspection of all Inlets	Ongoing	12/31/2026 <sup>4</sup>
11b	Phase 2: Construction	Ongoing	12/31/2030

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<sup>3</sup> Date refers to completion of study/design only.

<sup>4</sup> Date refers to completion of inspections only.



## APPENDIX C

<b>Consent Decree Paragraph</b>	<b>Deliverable Description</b>	<b>Deadline</b>	<b>Approval Required</b>
10.a	Updated OMM (if changes are necessary)	Annually on March 31 (with Chapter 94 Report)	No
10.f.i	Public Notification Plan	Within 30 days of Effective Date	No
11	Proposed Revised NMC Plan (as necessary to comply with NMCs)	Annually	Yes
13	Revised LTCP	December 31, 2024	Yes
14.a	Technical Memorandum on Flow Monitoring	Annually on March 31 (as part of Chapter 94 Report)	No
16	Updated Water Quality Modeling Plan	June 10, 2022	Yes
17	Financial Capability Assessment	Within 6 months of Effective Date	No
18	Report on Sensitive Areas and Priority Areas	Within 30 days of Effective Date	Yes
19	Alternatives Analysis	March 31, 2024	Yes
39	Table of Deliverables	Within 10 days of Effective Date	No
40	Semi-Annual Reports	Semi-annually on March 31st and September 30th	No
40	Chapter 94 Report	March 31st, each year	No